

NON-INTRUSIVE INSPECTION SCANNING AND DETECTION SOLUTIONS AGREEMENT

TERMS AND CONDITIONS

[Notes to the Bidder:

1. This agreement and its appended documents comprise four structural layers:
 - a. At the highest level is the "Main Agreement" running from page 6 to page 76;
 - b. The next order of documents in the hierarchy is a "Schedule";
 - c. Below a Schedule is an "Appendix";
 - d. Falling below an Appendix is the final and most subordinate layer which is an "Attachment".

2. **THIS AGREEMENT DOES NOT CONSTITUTE A FINAL AGREEMENT AND IS SUBJECT TO CHANGE PRIOR TO AWARD, BETWEEN THE PARTIES. SARS RESERVES THE RIGHT TO AMEND THE SAME, AT ITS OWN DISCRETION, AT ANY POINT PRIOR TO SIGNATURE HEREOF.**

3. Bidder(s) are required to provide comment(s) on the agreement, and the annexures thereof, if any, failing which the provisions of this agreement will be deemed to be accepted by the Bidder.

4. The Bidder will not be permitted to make mark-ups on the following clauses of the Main Agreement terms and conditions:
 - a. Safeguarding of Confidential Information clause;
 - b. Data Protection / Data Protection Agreement;
 - c. Processing and Protection of Personal Information Clauses;
 - d. Conflict of Interest clause;
 - e. Tax Compliance clause;
 - f. Audit Rights clause;
 - g. Security Clearance clause;
 - h. Liability;
 - i. Compliance with Applicable Laws clause.

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TERMS AND CONDITIONS

This Agreement, effective as of __ ____, 20_ ("**Effective Date**"), is entered into by and between the South African Revenue Service, an organ of State established in terms of the South African Revenue Service Act, 1997 (Act No 34 of 1997) with its registered address located at its Pretoria Head Office, 299 Bronkhorst Street, Nieuw Muckleneuk, 0181, the Republic of South Africa ("**SARS**") and, _____ (Proprietary) Limited, (Registration No. _____), a company incorporated under the laws of the Republic of South Africa, with its registered address located at _____, the Republic of South Africa ("**Supplier**"). As used in this Agreement, "**Party**" means either SARS or Supplier, as appropriate, and "**Parties**" means SARS and Supplier. The Parties agree that the following are the terms and conditions under which SARS agrees to purchase and Supplier agrees to provide, the Deliverables. Capitalised terms have the meanings given to them in **Schedule A (Glossary)**.

[Note to the Bidder: the above fields will be completed on contract award]

1. **BACKGROUND AND OBJECTIVES**

1.1. **Background**

- 1.1.1. SARS's mandate is to collect all revenue that is due; ensure maximum compliance with the South African Revenue Service Act 34 of 1997; and provide a customs service that will maximise revenue collection, protect South Africa's borders and facilitate trade. SARS's vision is to become an innovative revenue and customs agency that enhances economic growth and social development and supports South Africa's integration into the global economy in a way that benefits all South African citizens, thereby increasing South Africa's share of global trade.
- 1.1.2. The mandate of SARS Customs is to secure South Africa's trade supply chain by monitoring and controlling the movement of goods and people through all South African points of entry (e.g., land, sea, air) in as fast, efficient, and non-intrusive fashion as it can in light of its mandate to secure such supply chain. The acquisition of the NISD Solutions aims to improve the capability of SARS's customs control capability, to facilitate trade expansion, to minimise the import or export of prohibited goods, and to minimise the transport of restricted goods in violation of Applicable Law,

and to otherwise secure trade into and out of South Africa and Southern Africa.

- 1.1.3. As part of its objective to monitor and control the movement of goods and people through all South African points of entry, SARS issued a Request for Proposal (RFP22-2023) on _____ **[Note to Bidder: the date of the issue of RFP will completed at the time of contract conclusion]** (the 'RFP') inviting Bidders to submit Proposals to become sources of supply for the NISD Solutions listed in the table below (and as fully detailed herein and in Schedule: B – SOW), to enable SARS to secure South Africa's trade supply chain in accordance with South African law, the law of South Africa's trading partners, and any other applicable standards including, but not limited to, World Customs Organization standards, the United States Container Security Initiative and the International Port and Security Code promulgated by the International Maritime Organization:

Category of Devices	Inspection capabilities	Detection capabilities
High Energy In-line scanners	Minimum 300mm steel penetration – proven Dual energy minimum to segregate between organic and inorganic materials	Auto detect known objects of illicit nature Auto detect known patterns for concealment
Low Energy scanners	Transmission scan enabled with transmission receiver included in Request for Proposal (RFP 22 – 2023) 10mm minimum steel penetration	Auto detect known objects of illicit nature Auto detect known patterns for concealment and

[Note to Bidder: The Category(ies) awarded to the Bidder will be retained in the Table above upon finalisation of the contract]

- 1.1.4. SARS requires the provision of all NISD Solutions on a fully installed, tested and operational (i.e., in production at SARS) basis, and Services including Maintenance Services, Support Services, Training Services, Relocation Services and related services).

- 1.1.5. Supplier represents that throughout the Term it shall have: the resources; production capacity; skills; qualification; and experience necessary to supply NISD Solutions and Deliverables as proposed in its Proposal.
- 1.1.6. In reliance on these representations, SARS has selected Supplier as a Preferred Supplier of the NISD Solutions in Scanner Category(ies):_____. **[Note to Bidders: the relevant Scanner Category number(s) will be inserted during the contract finalisation process]**

1.2. Objectives

The Parties' objectives for this transaction are to:

- 1.2.1. establish a source of supply for NISD Solutions to enable SARS to:
 - 1.2.1.1. increase successful detection of undeclared, mis-declared, and prohibited goods through the utilisation of scanner solutions;
 - 1.2.1.2. avoid unnecessary manual inspections which will reduce the impact on trade;
 - 1.2.1.3. ensure greater operational efficiency by reducing dependency on human resources for inspections;
 - 1.2.1.4. store and retrieve scanned images thus being able to conduct audits on the inspection process;
 - 1.2.1.5. link scanned images to a case as part of the case management processes;
 - 1.2.1.6. provide operations and management with comprehensive reporting;
 - 1.2.1.7. secure South Africa's trade supply chain as described in Clause 1.1.3;
 - 1.2.1.8. acquire NISD Solutions over time, and on the terms set forth herein, but only as SARS's funding allows and SARS's assessment of its needs dictate;
 - 1.2.1.9. acquire NISD Solutions over time at costs that provide SARS price protection over time even as the Supplier 's technology footprint may change, and

- 1.2.1.10. upgrade/replace NISD Solutions as new technology is developed and becomes available during the Term that offers, among other things, a greater degree of accuracy, the ability to detect previously undetectable items, and the ability to perform inspections, scanning and detection in a manner that is less intrusive; more effective and more rapid.
- 1.2.2. reduce SARS's direct and indirect costs associated with the physical inspection of goods being imported and exported (including, for example, the cost of delays, short shipments, and damage to and loss of goods). This has included the introduction of an advanced case management system, an enhanced inspection process, the electronic submission of supporting documents, and an electronic release system.
- 1.2.3. provide opportunities to businesses which are compliant with the Broad-based Black Economic Empowerment Act 2003 (Act No. 53 of 2003), its regulations and codes.
- 1.2.4. Additionally, SARS is seeking specific solutions to provide the ability to:
 - 1.2.4.1. Deploy a scanning, inspection, and detection capability rapidly at any geographic location as required by business, including remote locations with little or no infrastructure.
 - 1.2.4.2. Relocate a scanning, inspection, and detection capability easily to accommodate changing business priorities.
- 1.2.5. As such SARS seeks to build a partnership with successful bidders to ensure the delivery of best-in-class solutions, including solutions that will facilitate the non-intrusive:
 - 1.2.5.1. Inspection of, vehicles (including busses), trucks, containers, and containerised cargo (legal sized road vehicles).
 - 1.2.5.2. Detection of restricted and prohibited goods by recognition of organic versus inorganic items, displaying the shape of the item, and the chemical make-up of an item to assist in the identification of narcotics, dutiable goods, tobacco products, currency, trafficked humans and animals, weapons, explosives, and sources of radiation, amongst others, and
 - 1.2.5.3. Automated identification of as broad a range of restricted and prohibited items as possible.

1.3. **Construction**

The provisions of this **Clause 1** are intended to be a general introduction to this Agreement and will not be used to expand the scope of either Party's obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement. However, to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed so far as to give effect to the provisions in **Clause 1.2**. Certain other rules of construction are set out in **Schedule A (Glossary)**.

2. **AGREEMENT STRUCTURE AND ORDER OF PRECEDENCE**

2.1. This **Main Agreement** provides a framework for, and the general terms applicable to, the Deliverables that the Supplier will provide to SARS under this Agreement. This **Main Agreement** is supplemented with schedules, attachments, and appendices.

2.2. **Schedules, Appendices and Attachments**

2.2.1. The schedules are the first level documents attached to the **Main Agreement**. The appendices are documents attached to the schedules. The attachments are documents attached to the appendices.

2.2.2. By written agreement, the Parties may, from time to time, include under the **Main Agreement**, schedules, attachments and appendices pertaining to New Deliverables as well as amendments to particular Deliverables provided by the Supplier to SARS under the Agreement.

2.2.3. The provisions of the **Main Agreement** will apply to all schedules, appendices and attachments issued thereunder.

2.3. **Order of precedence**

Any conflict between the provisions of the various clauses of the **Main Agreement**, the schedules, appendices, and attachments will be resolved in accordance with the following order of precedence (in descending order of priority):

2.3.1. the Main Agreement;

2.3.2. the schedules;

2.3.3. the appendices; and

- 2.3.4. attachments to the foregoing documents in the same order of precedence attaching to the documents to which they are annexed.

A schedule, appendix or attachment may amend the terms and conditions of this **Main Agreement** only with respect to the subject matter of such schedule, appendix, or attachment. Insofar as any schedule, appendix or attachment specifically amends the provisions of this **Main Agreement**, such amendment will prevail in respect of that schedule, appendix, or attachment only. For the avoidance of doubt, it is recorded that the terms of one schedule, appendix or attachment will not apply to any other schedule, appendix, or attachment to the extent they are in conflict.

3. **TERM**

3.1. **Term**

The term of this Agreement will commence on the Effective Date and will expire on the fifth anniversary of the Effective Date as it relates to the procurement of the NISD Solutions ("**NISD Solutions Term**") provided that the terms and conditions of this Agreement shall continue to govern the relationship of the parties for a period of 10 (ten) years from the date of Acceptance of the NISD Solution(s) by SARS, which is the anticipated lifespan of the NISD Solution(s) ("**Maintenance and Support Term**") collectively referred to as the "**Term**" unless:

(i) the Agreement is terminated earlier in accordance with this **Main Agreement** in which case the Agreement will expire on such earlier termination date; or (ii) extended under **Clause 3.2** in which case the Agreement will expire at the end of such Renewal Term ("**Term**"). It is recorded that the term of a Work Order, Change Order or purchase order for both Maintenance and Support Services and the procurement of the NISD Solutions may not extend beyond the Term. No new Work Orders may be concluded beyond the Term.

3.2. **Extension**

SARS reserves the right to extend this Agreement which will be subject to SARS procurement processes and prior written agreement between the Parties. Any such extension will be subject to the then-existing terms and conditions of this Agreement which will remain unchanged and in full force and effect during each such extension term, unless otherwise agreed by the Parties in writing.

4. DELIVERABLES

4.1. Definition and Scope of Deliverables

The term "Deliverables" will refer to and will include the duties, services, activities, functions, and responsibilities to be provided or to be performed by the Supplier for SARS in terms of this Agreement, including the duties, services, activities, functions and responsibilities described in or otherwise required under **Schedule B (SOW)** or elsewhere in this Agreement and as amended from time to time in accordance with this Agreement. **[Note to the Bidder: This clause will include a reference to the SOW that describes the Category(ies) for which this Agreement is being concluded]**

4.1.1. The Deliverables will also include:

- 4.1.1.1. the provision of Deliverables and/or projects upon the conclusion of a Work Order / Change Order;
- 4.1.1.2. performance compliant with SARS procedures and policies;
- 4.1.1.3. co-operating with Third Parties;
- 4.1.1.4. complying with the Service Levels; and
- 4.1.1.5. duties, services, activities, functions, infrastructure, and responsibilities reasonably required for the proper performance and provision of the Deliverables, even if not specifically described in this Agreement, other than the Dependencies.

4.1.2. In each case, the term "Deliverables" will refer to and include such services, functions and responsibilities as they may evolve during the Term and as they may be supplemented, enhanced, modified or replaced including to keep pace with changes in SARS business and advances in technology and processes available to Supplier, all in accordance with and subject to the terms and conditions of this Agreement and as set out in either a Work Order or in a Change Order as detailed in Appendix M-2 or Appendix M-3 to Schedule M, as the case may be.

4.2. Performance of Deliverables

4.2.1. The Deliverables will at all times be provided in accordance with and subject to the terms and conditions of this Agreement and the Performance Standards.

- 4.2.2. For the avoidance of doubt, Supplier will perform:
- 4.2.2.1. the obligations listed in this Agreement;
 - 4.2.2.2. the Deliverables (including all steps and tasks) detailed in Schedule B and/or any other Schedule or Appendix issued in terms of this Agreement; and
 - 4.2.2.3. any steps and tasks required to perform the Deliverables, even if such steps and tasks have not been listed or described in this Agreement so as to ensure that SARS receives and realises the benefit of the NISD Solutions.
- 4.2.3. The Supplier will perform the Deliverables diligently, in a timely manner, and in accordance with the Performance Standards and time schedules set forth or referred to in this Agreement. The Supplier will promptly notify SARS upon becoming aware of any incident or circumstances that may reasonably be expected to jeopardise the performance or timely performance of any part of the Deliverables. Notwithstanding anything to the contrary contained in this Agreement, the Supplier will not take or authorise any action that results in a reduction of the scope of or degradation in the quality and timeliness of the performance of the Deliverables for the duration of this Agreement.
- 4.2.4. The Supplier will for the duration of this Agreement:
- 4.2.4.1. use all Commercially Reasonable Efforts to improve the quality and efficiency of the provision of the Deliverables, and
 - 4.2.4.2. ensure that the Charges are such that the NISD Solutions are cost effective to SARS. The Supplier will be required to implement all necessary formal processes to facilitate improvement of the NISD Solutions. The Supplier will ensure that the Charges comply with the provisions of Schedule D (Pricing, Invoicing and Payments).
- 4.2.5. The Supplier will continue to perform its obligations under this Agreement, including the performance of the Deliverables, without any interruptions, including during any dispute between the Parties.
- 4.2.6. The Supplier will perform the Deliverables in accordance with and subject to the provisions of Schedule E (Governance).

4.3. **Work Orders**

If SARS wishes to order a NISD Solution it will issue an RFQ to all Preferred Suppliers appointed in all Scanner Categories in which it is apparent, in SARS's sole discretion, that a solution may be found. The form of an RFQ Template is set out in Appendix M-1 (Form of an RFQ Template) to Schedule M.

4.3.1. The RFQ for a NISD Solution will, as a minimum:

- 4.3.1.1. identify the Scanner Category within which the NISD Solution falls;
- 4.3.1.2. identify the SARS Sites where, and the components of the NISD Solution is to be installed;
- 4.3.1.3. set forth (or have attached thereto) a template identifying the basic specifications for the NISD Solution, works and/or services;
- 4.3.1.4. establish the date by which the Supplier is to deliver the NISD Solution (including any related options, works and/or services) and the date by which the Supplier is to install and test the NISD Solution together with its related options and elevate the NISD Solution and related options into production in accordance with the requirements of this Agreement;
- 4.3.1.5. request the total NISD Solution Price (including any costs incidental to the NISD Solution)

4.3.2. The basic specifications provided by SARS will describe SARS's key requirements for the NISD Solution and require that each of the Preferred Suppliers state whether the model of Scanner it proposes in response to an RFQ meets such requirements and identify any gaps between SARS's requirements and the specifications of the proposed model.

4.3.3. If SARS awards an RFQ to the Supplier, the resulting Work Order that is agreed by the Parties shall be deemed to be a Work Order under this Agreement. The Supplier shall deliver the NISD Solution at the price set forth in the Work Order.

4.3.4. After the Parties have entered into a Work Order under this Agreement SARS may also order, and the Supplier shall provide to SARS, variable or additional items contained in the Work Order. If a compatible option is

offered by more than one Preferred Supplier in the applicable Scanner Category, SARS shall submit an RFQ to the applicable Preferred Suppliers in accordance with Clause 4.1. If Supplier is the only Preferred Supplier that offers a compatible option, SARS may order the option by completing and issuing an RFQ for a Restricted Solution in the form set out in **Appendix M-1 to Schedule M** and Supplier shall provide the variable or additional items to SARS in terms of a Restricted Solution Work Order.

- 4.3.5. The NISD Solution provided by Supplier shall conform to the specifications set forth in the applicable Work Order and obligations contained within this Agreement.
- 4.3.6. Except as otherwise agreed to or required by SARS in its sole discretion, Supplier shall only provide NISD Solutions that are new and have been made generally available to Supplier's other customers.
- 4.3.7. SARS makes no undertaking that an RFQ will be issued during the Term of the agreement. SARS, further, makes no undertaking that if an RFQ is issued that it will be awarded.
- 4.3.8. Supplier must perform all obligations required of it in respect of a Scanner Category to maintain its Preferred Supplier status in in order to participate in RFQs issued within that Scanner Category. Subject to clause 4.3.9 the obligations required of Suppliers to maintain its Preferred Supplier status include (without limitation):
 - 4.3.8.1. adherence to the rules of the RFQ;
 - 4.3.8.2. an obligation to respond completely and timeously to all RFQs issued to Supplier;
 - 4.3.8.3. submission of RFQ pricing that does not exceed budgetary pricing provided as part of the RFP Proposal;
 - 4.3.8.4. timeous submission of CSD Status;
 - 4.3.8.5. BBBEE certificates;
 - 4.3.8.6. maintenance of PSIRA registration; and
 - 4.3.8.7. full and timeous performance of any obligations, including adherence to the performance standards, required in terms of an RFQ awarded to Supplier.
- 4.3.9. Notwithstanding the provisions of clause 4.3.8 SARS may on good cause

shown, exercise its sole discretion to retain Supplier as a Preferred Supplier.

4.4. Title

As between SARS and Supplier, title to any component of the NISD Solution which is capable of being transferred will be transferred to SARS upon Acceptance by SARS of the NISD Solution. Supplier shall retain the risk of damage and / or loss with respect to any component of the NISD Solution ordered by SARS prior to its Acceptance by SARS.

4.5. Enhance Capabilities and Effectiveness

The NISD Solutions provided by the Supplier must enhance SARS's ability to deliver high-quality, cost-effective services. The technology provided by the Supplier will provide SARS with industry leading levels of functionality and performance.

4.6. Cost Predictability

The Supplier will ensure predictable Charges with no unanticipated price increases over time, so that factors affecting the Supplier's invoiced charges to SARS remain within SARS's control.

4.7. Improve and Maintain Technology

Supplier will recommend the implementation of new technologies to deliver the NISD Solutions to SARS in order to maintain competitiveness in the quality and scope of NISD Solutions available to SARS and to take advantage of market cost efficiencies.

4.8. Notification of need for replacement of NISD Solutions

Supplier will timeously notify SARS of the need to replace existing NISD Solutions which, in Supplier's opinion, have become uneconomical or impossible to repair.

4.9. Deliverables to Governmental Entities

4.9.1. At SARS's election, Supplier will make the Deliverables, available to other Governmental Entities under this Agreement (including at the Service Levels and for the Charges).

4.9.2. SARS will provide Supplier with 30 (thirty) days (or such other period as the

Parties may mutually agree) prior notice if it wishes to have Supplier provide Deliverables to other Governmental Entities; provided, however, that Supplier will use Commercially Reasonable Efforts to commence performance of the Deliverables to the other Governmental Entities as of the date requested by SARS.

4.10. **Non-exclusivity and non-committal**

4.10.1. This Agreement is non-exclusive in that SARS will not be precluded from obtaining services that may be similar or identical to the Deliverables from any other supplier.

4.10.2. SARS makes no commitment to any spend; to issuing or awarding any RFQs or to purchasing any quantity or volumes of the Deliverables from Supplier.

4.10.3. Nothing contained herein will in any way be construed or constitute a guarantee in favour of Supplier that Supplier will receive any work or contract for services from SARS in the future, whether under the Agreement or otherwise.

4.11. **Co-operation with SARS and Third Parties**

4.11.1. Supplier acknowledges that SARS may have outsourced certain of its services and business processes, related and/or ancillary to the Deliverables, to Third Parties and that SARS may outsource certain other functions to other Third Parties. Supplier will, at no additional cost and as part of the Deliverables, co-ordinate, co-operate and consult with such Third Parties and SARS regarding the performance of the Deliverables so that the Supplier and the Third Parties provide services to SARS in as seamless a manner as is reasonably possible.

4.11.2. The Supplier will use Commercially Reasonable Efforts to ensure that all services, equipment, Software and other resources (including those provided by SARS) (collectively, the "**Resources**") utilised by the Supplier or approved by the Supplier for utilisation by SARS in connection with the Deliverables, will be successfully integrated and interfaced, and will be compatible with, the services, equipment, networks, Software, enhancements, upgrades, modifications and other resources that are being provided or recommended by Third Party Suppliers (collectively, the "**Third Party Resources**"). No Software that requires sharing or analysing of

images must be locked for proprietary use only and must be compatible with the WCO, suggested image standards to all internal and external software that are aligned to the WCO proposed standards, to be compatible in full. Further, the Supplier will use Commercially Reasonable Efforts to ensure that none of the Deliverables or other items provided to SARS by the Supplier will be adversely affected by any such Resources and/or Third Party Resources, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures.

4.11.3. To the extent that SARS performs any of the Deliverables or functions itself, or retains Third Parties to do so, the Supplier will co-operate with SARS or any such Third-Party Supplier, which co-operation will include:

4.11.3.1. providing reasonable access to any facilities and/or resources being used to provide the Deliverables;

4.11.3.2. providing such information regarding the Deliverables as SARS and/or the Third-Party Supplier may request;

4.11.3.3. where applicable, and where required by SARS, providing the Deliverables until completion of the successful transition of the Deliverables from the Supplier to SARS and/or the Third Party Supplier;

4.11.3.4. providing operational data (including documentation, schedules, and Service Level performance data); and

4.11.3.5. providing such other services set out in **Schedule F (Disengagement Assistance)**.

4.11.4. When engaging a Third Party Supplier as contemplated in this Clause 4.11, SARS will use reasonable efforts to require the Third Party Supplier: (i) to comply with the Supplier's reasonable security requirements; and (ii) to the extent such Third Party Supplier will be performing work on the Supplier-owned, licensed or leased Software or hardware, to comply with the Supplier's reasonable work standards, methodologies and procedures; provided, however, that SARS may disclose to Third Party Supplier such Supplier-owned, licensed or leased Software or hardware.

4.11.5. The Supplier will immediately notify SARS if an act or omission of such a Third-Party Supplier may cause a problem or delay in providing the

Deliverables and will co-operate with SARS to prevent or circumvent such problem or delay.

5. PERFORMANCE OF SERVICES BY SUBCONTRACTORS

- 5.1. Except for the vendors listed in **Schedule L (Subcontractors to Supplier)** as Subcontractors to the Supplier, the Supplier may not in any way (including by entering into a partnership, alliance or outsourcing arrangement for this purpose) subcontract its obligations under the Agreement without the prior written consent of SARS.
- 5.2. Notwithstanding the provisions of Clause 27.9.1, SARS will be entitled at its sole discretion to withhold approval in respect of the appointment of any Subcontractor to whom the Supplier intends to delegate the performance of a material part of the Deliverables.
- 5.3. Where SARS has consented to the appointment of a Subcontractor as contemplated in Clause 5.1 above, the agreements between Supplier and its Subcontractors relating to the subcontracting of the Deliverables ("**Subcontract**") will contain materially the same terms and conditions as this Agreement to the extent such terms and conditions are relevant to the services to be provided by the Subcontractor (including a restriction on the Subcontractor's right to further subcontract its obligations without SARS's prior written consent).
- 5.4. In no event will the Supplier be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. Supplier will at all times be responsible to SARS for fulfilment of all the Supplier's obligations under this Agreement and will remain SARS's sole point of contact regarding the Deliverables, including with respect to payment.
- 5.5. Supplier will supervise the activities and performance of each Subcontractor and will be liable for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS.
- 5.6. If SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the

Subcontractor on the strength of which SARS's consent was granted for the appointment of such Subcontractor, SARS may notify Supplier of its determination in writing, indicating the reasons therefore, in which event Supplier will promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of this Clause 5, replace such Subcontractor with another Subcontractor.

- 5.7. Supplier will not disclose SARS's Confidential Information to a Subcontractor unless and until such Subcontractor or prospective Subcontractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in Clause 15 below.

6. SERVICE LEVELS

Supplier will provide the Deliverables in accordance with the Service Levels and Service Level Credits detailed in **Schedule C (Service Levels)**, a Work Order or a Change Order. The Supplier's performance of the Deliverables will be measured against these Service Levels.

7. REQUIRED RESOURCES

7.1. Supplier Facilities

- 7.1.1. Supplier is responsible for providing (at its own expense) any space it requires to provide the Deliverables.
- 7.1.2. Supplier will permit SARS Personnel (including the personnel of any SARS agents and representatives) and SARS Third Party Suppliers to enter into those portions of the Supplier Facilities used to provide the Deliverables. Such SARS Personnel and SARS Third Party Suppliers will comply with Supplier's reasonable security requirements.

7.2. Resources

Supplier will provide all resources including facilities, personnel, tools, hardware and Software required for Supplier to perform the Deliverables in terms of the Agreement (including the Performance Standards) at whatever volumes are from time to time required by SARS.

7.3. Use of Resources

Supplier will use all resources, facilities and/or services as are necessary to provide the Deliverables in an efficient, cost-effective, and non-wasteful manner.

7.4. No SARS Representations and Warranties Regarding Resources

7.4.1. SARS makes no representations and/or warranties regarding: (i) the SARS assets it owns, leases or licences from Third Parties; (ii) the SARS facilities, including any furnishings, telephonic hardware, and computer hardware; (iii) or SARS sites (collectively the “**SARS Assets**”). Accordingly, should SARS make available the SARS Assets to the Supplier such assets will be made available on an 'as is, where is' basis, with no warranties whatsoever, including with respect to the condition, state of repair, quality, fitness for a particular purpose or merchantability thereof.

7.4.2. SARS makes no representations and warranties regarding any Third-Party Intellectual Property including with respect to the likelihood that the Supplier will be able to obtain the Required Consent, the cost of obtaining the Required Consent, or the fitness of the Third-Party licensor of Third Party Intellectual Property.

7.4.3. Supplier remains fully responsible for the performance of the Deliverables in terms of this Agreement (including Performance Standards) without regard to: (i) the condition or suitability of any SARS Assets, SARS Intellectual Property and Third-Party Intellectual Property; (ii) its ability to obtain one or more Required Consents; and (iii) the performance or non-performance by any of SARS's suppliers, licensors or lessors.

7.5. Managed SARS Third Party Contracts

[Note to the Bidder: No Managed SARS Third Party Contracts are envisaged at Effective Date, but may be required during the Term]

7.5.1. When and to the extent that SARS requires the Supplier to provide Managed SARS Third Party contract management services and where SARS obtains the right to disclose the terms of a Managed SARS Third Party Contract to the Supplier, the Supplier will manage the applicable Managed SARS Third Party's performance of services for SARS under such contract, including with respect to the Managed SARS Third Party's compliance with the terms of the contract addressing service levels and

pricing.

- 7.5.2. If Supplier becomes aware of a breach of or has a concern with a Third Party's performance under, a Managed SARS Third Party Contract, it will immediately: (i) notify SARS; (ii) provide recommendations to SARS regarding the appropriate course of action; and (iii) take such actions as SARS may direct in writing. Supplier will not take any action or communicate in any way with the applicable Managed SARS Third Party if there is reason to believe there is a breach of the Managed SARS Third Party Contract unless it obtains SARS's prior approval.
- 7.5.3. Subject to Clause 7.5.2, Supplier will use Commercially Reasonable Efforts to resolve any performance problems by the Managed SARS Third Party under each Managed SARS Third Party Contract.
- 7.5.4. Should SARS require Managed Third-Party Deliverables from Supplier, such services will be provided as a New Service.

8. SUPPLIER PERSONNEL

8.1. Health, Safety and Security

- 8.1.1. Supplier will ensure that Supplier Personnel will at all times, whilst on SARS's premises, adhere to the standard health, safety and security procedures and guidelines applicable to SARS Personnel, as such procedures and guidelines may be changed by SARS from time to time and which will be made available to Supplier on request, it being incumbent on Supplier to ensure that it regularly requests and obtains the latest versions of such procedures and guidelines. Should SARS at any time have reason to believe that any member of Supplier Personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member access to any or all of SARS's premises and require Supplier to replace such member without delay.
- 8.1.2. Supplier will register with the Compensation Commissioner as required by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993). Documentary proof of such registration and/or a letter of good standing from the Compensation Commissioner must be made available to SARS upon request.

[Note to the Bidder: Include this documentation as part of the Proposal.]

8.1.3. SARS's security requirements and regulations include, inter alia, the right to search: (i) the person of any member of Supplier Personnel; (ii) any container in the possession of Supplier Personnel; and (iii) any vehicle driven by Supplier Personnel, whilst Supplier Personnel are on-site at any premises of SARS. Supplier will obtain an undertaking from Supplier Personnel irrevocably agreeing to submit to such searches and consents to such searches by SARS or any person duly appointed by SARS to undertake such searches.

8.1.4. Supplier hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), to ensure that Supplier and Supplier Personnel comply with the aforesaid Act. Supplier accepts sole responsibility for all health and safety matters relating to the provision of the Deliverables, or in connection with, or arising out of such Deliverables including:

8.1.4.1. providing for the health and safety of Supplier Personnel and ensuring that Supplier Personnel at all times adhere to the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), and the terms and conditions of this Agreement; and

8.1.4.2. ensuring that neither SARS Personnel nor any Third Party's health and safety is endangered in any way by Supplier's activities or conduct in providing the Deliverables.

8.2. **Key Supplier Personnel and Key Supplier Positions**

8.2.1. The Key Supplier Positions and Key Supplier Personnel are detailed in **Appendix E-1 (Key Supplier Positions) to Schedule E (Governance)**.

8.2.2. Before assigning an individual to a Key Supplier Position, the Supplier will notify SARS of the proposed assignment, introduce the individual to the appropriate SARS representatives (and, upon request, provide such representatives with the opportunity to interview the individual) and provide SARS with a *curriculum vitae* and other information about the individual which may be reasonably requested by SARS. If SARS in good faith objects to the proposed assignment, the Parties will attempt to resolve SARS's concerns on a mutually agreeable basis. If the Parties are not able to resolve SARS's concerns within 5 (five) Business Days of SARS so objecting or such longer period as SARS may in writing agree, Supplier will not assign the individual to that position or to any other position on the

SARS account and will propose to SARS the assignment of an alternative individual of suitable ability and qualifications for approval by SARS.

8.2.3. Supplier Personnel filling Key Supplier Positions may not be removed from the SARS account until SARS has approved a suitable replacement and such replacement has been properly trained and made familiar with the SARS account.

8.2.4. In the case of an unforeseen Key Supplier Position vacancy, the Supplier will promptly fill the vacant Key Supplier Position with an appropriately qualified and trained individual in accordance with Clause 8.2.2 above.

8.3. Supplier Service Delivery Manager

8.3.1. Supplier will appoint a Supplier Service Delivery Manager who will have the full authority necessary to perform his or her functions pursuant to the Agreement, which includes the obligation to ensure that the full scale and scope of Supplier's resources are brought to bear on the Deliverables when necessary.

8.3.2. The Supplier Service Delivery Manager will be a Key Supplier Positions.

8.4. Turnover of Supplier Personnel

Supplier agrees that it is in both Parties' best interests for Supplier to keep the turnover rate of the Supplier Personnel at a low level, particularly in respect of Supplier Personnel performing important Service components. Accordingly, Supplier will use Commercially Reasonable Efforts to limit Supplier Personnel turnover.

8.5. Removal of Supplier Personnel

Supplier will promptly remove from the SARS account any Supplier Personnel whose presence or involvement in the SARS account is determined by SARS and/or Supplier to be detrimental to the Deliverables or to the SARS work environment. Supplier indemnifies SARS from any claims that may be brought by any Supplier Personnel who may be affected as a result of SARS exercising its rights under this Clause 8.5.

8.6. Continuing Obligation to Perform

Supplier will remain fully responsible for the provision of the Deliverables in terms of

the Agreement (including the Performance Standards) notwithstanding, among other things: (i) SARS's unwillingness to approve one or more proposed assignments of individuals to Key Supplier Positions; (ii) turnover of Supplier Personnel including Key Supplier Personnel; or (iii) the removal by SARS and/or Supplier of Supplier Personnel including under Clause 8.5 above.

8.7. **Security Clearance**

8.7.1. The Supplier represents and warrants that it will ensure that the Supplier Personnel engaged in the provision of the Services are suitable and pose no risk to SARS. Any member of the Supplier Personnel who is engaged, or is to be engaged, in providing the Services must, if requested by SARS, comply with SARS's internal security clearance requirements, including submitting a security clearance certificate, failing which SARS shall be entitled to require the Service Provider to replace such member of the Service Provider Personnel with someone who does so comply. The Service Provider undertakes to indemnify SARS against any claims that that may be brought by any of the Supplier Personnel who may be affected as a result of SARS exercising its rights under this Clause.

8.7.2. As a confirmation that the Supplier Personnel engaged to provide the Services are suitable and appropriately qualified, trained, experienced, skilled and available to render such services in terms of this Agreement including confirmation of such Supplier Personnel's citizenship, criminal record status and/or credit worthiness, the Supplier represents and warrants that it has conducted a background screening exercise on every member of the Supplier Personnel whom is assigned to SARS for the fulfilment of its obligations in terms of this Agreement shall if requested by SARS provide the report from a reputable screening agency which shall verify the following:

8.7.2.1. Citizenship including residency status;

8.7.2.2. Criminal activity report; and

8.7.2.3. Credit worthiness.

8.7.3. The Supplier shall ensure that the validity of such report shall not be older than 3 (three) months as at the date of request or as at the commencement

of such Supplier's Personnel duties to SARS in terms of this Agreement, as the case may be, and shall be updated as required by SARS from time to time.

- 8.7.4. In the event that the report reveals evidence that the Supplier Personnel assigned to perform the Services are not qualified an/or do not possess the level of skills required for the performance of the Services, the Supplier shall ensure a replacement of such member of the Supplier Personnel with one whose background screening meets the requirements of SARS. The Supplier undertakes to indemnify SARS against any claims that may be brought by any of the Suppliers staff who may be affected as a result of SARS exercising its rights under this Clause.
- 8.7.5. The Supplier shall further ensure that its staff assigned to provide the Services to SARS as envisaged in this Agreement shall for the duration of this Agreement, be subject to SARS's "Anti-Corruption and Security Internal Policy: Security Vetting" as amended from time to time, as well as other security legislation and policies applicable to the entities providing the services to the organs of state.
- 8.7.6. A breach by the Supplier of any warranty, representation, or other provision of this Clause 8 or any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on SARS the right, in its sole discretion, to utilise any remedy created in this Agreement for the enforcement of SARS rights, including termination in terms of this Agreement.

9. SARS'S RESPONSIBILITIES

9.1. Responsibilities

SARS's responsibilities under the Agreement ("**Dependencies**") are set out in **Appendix B-5 (Dependencies)**.

[Note to the Bidder: As part of your Proposal, you must identify any Dependencies by completion of Appendix B-5 (Dependencies). Appendix B-5 (Dependencies) will have an attachment per SARS Site.]

For the avoidance of doubt, SARS will not be responsible for any tasks, functions or

the like under the Agreement other than the Dependencies.

9.2. **Excused Performance**

9.2.1. Supplier will promptly notify SARS upon becoming aware that SARS has failed to perform, or is reasonably likely to fail to perform, a Dependency.

9.2.2. Supplier's failure to perform any of its obligations under the Agreement (including a failure to perform an obligation within the timeframes required under this Agreement) will be excused if and to the extent that:

9.2.2.1. such failure by Supplier would not have occurred but for SARS's failure to perform its Dependencies;

9.2.2.2. such failure by SARS directly and materially adversely affects Supplier's timely performance of its obligations under the Agreement;

9.2.2.3. Supplier provides SARS with prompt written notice of such non-performance in accordance with Clause 9.2.1 and uses Commercially Reasonable Efforts to perform notwithstanding SARS's failure to perform, including by way of Workarounds or other means; and

9.2.2.4. Supplier demonstrates to SARS's reasonable satisfaction that SARS's failure had a direct, material adverse impact on Supplier's ability to perform its obligations in accordance with the Agreement.

9.2.3. To the extent any delay in performance by Supplier is excused under this Clause 9.2, the deadlines for its performance will be extended for a reasonable period of time to accommodate the delay actually and reasonably caused by SARS's failure to perform a Dependency in accordance with this Agreement.

9.2.4. Supplier will be excused from the assessment of a Service Level Credit to the extent set forth in Clause 2.5 of **Schedule C (Service Levels)**.

10. **GOVERNANCE**

The Parties will comply with their respective obligations set forth in **Schedule E (Governance)**.

11. CHARGES/PRICING

Charges for the Deliverables, as well as invoicing and payment terms, are set out in **Schedule D (Pricing, Invoicing and Payments)**; its Attachments; and any Work Orders or Change Orders concluded with the Supplier.

12. INTELLECTUAL PROPERTY RIGHTS

12.1. SARS Intellectual Property

SARS retains all right, title and interest in and to the SARS Intellectual Property. As of the Effective Date, Supplier is granted a non-exclusive licence for the continued duration of this Agreement to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of SARS Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Deliverables to SARS. Supplier will not be permitted to use SARS Intellectual Property for the benefit of any entities other than SARS without the signed written consent of SARS, which may be withheld at SARS's sole discretion. Except as otherwise requested or approved by SARS, which approval will be at SARS's sole discretion, Supplier will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement or the date of completion of the Deliverables where such date is earlier.

12.2. Intellectual Property developed during the Term

12.2.1. SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of providing the Deliverables ("**Developed Intellectual Property**").

12.2.2. Supplier hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.

12.2.3. Supplier agrees to execute any documents or take any other actions as may reasonably be necessary, or as SARS may reasonably request in writing, to perfect SARS's ownership of such Developed Intellectual Property, and further, hereby irrevocably grants to SARS its power of attorney in *rem suam* with the right on behalf of Supplier to sign all such deeds and documents and to take all such actions as may be necessary for

SARS to perfect its rights of ownership over such Developed Intellectual Property should Supplier fail to comply with any such written request.

12.2.4. Unless otherwise agreed, where Developed Intellectual Property incorporates Supplier Intellectual Property, systems, and processes that Supplier did not develop in the course of providing Deliverables under the Agreement, Supplier hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS, SARS Personnel and agents to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Supplier Intellectual Property insofar as it forms part of the Developed Intellectual Property.

12.3. **Supplier Intellectual Property**

Subject to Clause 12.2.4, Supplier retains all right, title and interest in and to Supplier Intellectual Property that is used in connection with the Deliverables. Supplier grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Deliverables during the Term and during the Disengagement Assistance Period.

12.4. **Third Party Intellectual Property**

Supplier will neither, for the Term of this Agreement, incorporate any Third-Party Intellectual Property into any Developed Intellectual Property nor introduce into SARS's environment any Third-Party Intellectual Property without first obtaining SARS's written consent thereto. Supplier will be responsible for obtaining a licence on behalf of SARS, at Supplier's cost and in SARS's name, to use such Third-Party Intellectual Property from the Third Party. Supplier is required to perform the Deliverables in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third Party Intellectual Property and/or failure to assist in procuring the Required Consents as contemplated in Clause 12.6.1 below.

12.5. **Use of Third-Party Intellectual Property licensed to SARS**

Supplier will not, without SARS's express prior written consent, use any Third-Party Intellectual Property licensed to SARS whether to provide the Deliverables to SARS or for any other purpose whatsoever. Supplier acknowledges that such unauthorised use of Third-Party Intellectual Property licensed to SARS may constitute a breach of

the provisions of the licence agreement/s in terms of which such Third Party Intellectual Property is licensed to SARS. Should consent be granted to Supplier to use Third Party Intellectual Property licensed to SARS, Supplier undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. Supplier is required to perform the Deliverables in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent.

12.6. **Required Consents and License Fees**

12.6.1. Supplier will, by using Commercially Reasonable Efforts, timeously and at its own cost and expense, obtain all Required Consents with respect to any Third-Party Intellectual Property required by it to provide the Deliverables.

12.6.2. Supplier will be responsible for all financial liability related to licence and maintenance fees under SARS's agreements with Third Parties for the licence and maintenance of any Third-Party Intellectual Property to the extent that such liability arises from Supplier's use, support, maintenance or access to such Third-Party Intellectual Property.

12.6.3. Supplier will be financially responsible for any licence and maintenance fees under Supplier's agreements with Third Parties for the licensing and maintenance of any Third-Party Intellectual Property.

12.7. **Residual Knowledge**

Nothing contained in this Agreement will restrict either Party from the use in its business activities of any generic ideas, concepts, know-how, or techniques developed or learned by such Party pursuant to this Agreement, provided that in doing so such Party does not:

12.7.1. disclose Confidential Information to Third Parties;

12.7.2. infringe any Intellectual Property Rights of the other Party and/or Third Parties; or

12.7.3. use any such residual knowledge or assist or enable any Third Party to use such residual knowledge to the detriment of SARS.

12.8. **Licence Limitations**

Except for the licence rights contained in this Clause 12, neither this Agreement nor any disclosure made hereunder grants any licence to either Party or any Third Party

in respect of any Intellectual Property Rights of the other Party.

13. CHANGE CONTROL

Supplier will control and manage changes to all aspects of the Deliverables and to the environment in which it provides the Deliverables in accordance with SARS's change management standards and procedures detailed in **Schedule B (SOW)** and **Schedule E (Governance)**.

14. REVIEW AND ACCEPTANCE OF DELIVERABLES

All Deliverables delivered by Supplier to SARS pursuant to this Agreement will be subject to SARS's review, approval and acceptance requirements as may be detailed in **Schedules B (SOW)** and **Schedules C (Service Levels)** or elsewhere in this Agreement.

15. SAFEGUARDING OF CONFIDENTIAL INFORMATION

15.1. Acknowledgment of Importance of Confidential Information

The Receiving Party acknowledges:

15.1.1. the great importance of the Confidential Information to the Furnishing Party and, where applicable, Third-Party proprietors of such information, and recognises that the Furnishing Party and/or Third Party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in terms of this Agreement; and

15.1.2. that all Confidential Information of the Furnishing Party that comes to the knowledge of the Receiving Party is proprietary to the Furnishing Party or, where applicable, the relevant Third-Party proprietor. The Receiving Party also acknowledges that nothing in this Agreement confers any rights or licence to Confidential Information on the Receiving Party.

15.2. Non-Disclosure

The Receiving Party agrees:

15.2.1. except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Furnishing Party;

- 15.2.2. notwithstanding the foregoing, Supplier may, subject to Clause **Error! Reference source not found.**, disclose such information to one or more Third Parties performing services required hereunder where:
- 15.2.2.1. such Third Party is performing services in terms of this Agreement;
 - 15.2.2.2. such disclosure is necessary or otherwise naturally occurs in that entity's scope of responsibility; and
 - 15.2.2.3. the Third Party agrees or has agreed in writing to assume the obligations described in this Clause 15;
- 15.2.3. except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Furnishing Party and, in the event that the Confidential Information is proprietary to a Third Party, it will also be incumbent on the Receiving Party to obtain the consent of such Third Party;
- 15.2.4. to restrict the dissemination of the Confidential Information only to those of its personnel who are actively involved in activities for which use of Confidential Information is authorised and then only on a 'need to know' basis and the Receiving Party will initiate, maintain and monitor internal security procedures reasonably acceptable to the Furnishing Party to prevent unauthorised disclosure by its personnel;
- 15.2.5. to take all practical steps, both before and after disclosure, to impress upon its personnel who are given access to Confidential Information the secret and confidential nature thereof; and
- 15.2.6. notwithstanding the foregoing, SARS may disclose to Third Parties the Confidential Information of Supplier to the extent required to exercise its rights under this Agreement (including **Schedule F (Disengagement Assistance)**) provided SARS obtains the written agreement of such Third Party to a confidentiality agreement materially consistent with the confidentiality provisions set out in this Clause 15.

15.3. **Standard of Care**

- 15.3.1. The Receiving Party will protect the Confidential Information of the Furnishing Party in the manner that it employs to protect its own Confidential Information. In no event will the Receiving Party use less than

Commercially Reasonable Efforts to protect the confidentiality of the Confidential Information of the Furnishing Party.

- 15.3.2. Supplier will ensure that no Supplier Personnel, agents and Subcontractors or unauthorised parties to access any data, files or programs unless it must do so to perform the Deliverables.
- 15.3.3. In addition, Supplier will implement on or before the Effective Date, and thereafter maintain, appropriate safeguards against the unauthorised access to, and destruction, loss, or alteration of, SARS data in Supplier's possession and to which the Supplier may have access. Such safeguards must be acceptable to SARS and in accordance with all policies and procedures of SARS regarding data access, privacy and security and no less rigorous than the most rigorous of the practices maintained by SARS or Supplier as of the Effective Date.
- 15.3.4. In the event that SARS grants Supplier permission to remotely access SARS's hardware, Software, internet facilities, data, telecommunication facilities and/or network facilities, Supplier will adhere to all SARS's policies applicable to remote access, which are available to Supplier on request.

15.4. Procure Undertakings from Personnel

- 15.4.1. Supplier will ensure that each of the Supplier Personnel, agents and Subcontractors execute the SARS Oath of Secrecy/Solemn Declaration, prior to performing any of the Deliverables under this Agreement or being given access to any facilities used to perform the Deliverables.
- 15.4.2. Supplier will ensure that the Supplier Personnel, agents and Subcontractors who have access to Confidential Information of SARS give a written undertaking in favour of SARS in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by SARS prior to access to any Confidential Information.
- 15.4.3. SARS will be entitled to deny Supplier Personnel, agents and Subcontractors access to SARS Sites/facilities or prevent Supplier Personnel, agents and Subcontractors from conducting any work in relation to the Deliverables should SARS not be in receipt of the SARS Oath of Secrecy/Solemn Declaration and a signed undertaking on such terms and conditions as determined by SARS.

15.4.4. Supplier's failure to provide the undertaking and the SARS Oath of Secrecy/Solemn Declaration, referred to in this Clause 15.4 and/or SARS's failure to receive such undertaking will in no way detract from Supplier's obligations in terms of this Agreement.

15.4.5. Supplier will comply with and will procure that all Supplier Personnel, agents and Subcontractors comply with all security measures imposed by SARS regarding security and access to the SARS Sites.

15.5. Exceptions

The Parties acknowledge that subject to Applicable Law this Clause 15 will not be applicable where the Receiving Party discloses the Confidential Information to attorneys or auditors, provided that: (i) such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities; and (ii) the attorneys or auditors agree in writing to be bound by the provisions of this Clause 15 and complete and submit the SARS Oath of Secrecy/Solemn Declaration to SARS.

15.6. Disclosure Required by Law, Regulation or Court Order

In the event that the Receiving Party is required to disclose the Confidential Information of the Furnishing Party in terms of a requirement or request by operation of law, regulation or court order but only to the extent so disclosed and only in the specific instance and under the specific circumstances in which it is required to be disclosed, the Receiving Party will:

15.6.1. advise the Furnishing Party thereof prior to disclosure, if possible;

15.6.2. take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;

15.6.3. afford the Furnishing Party a reasonable opportunity, if possible, to intervene in the proceedings; and

15.6.4. comply with the Furnishing Party's requests as to the manner and terms of any such disclosure.

15.7. Loss of Confidential Information

In the event of any unauthorised disclosure or loss of, or inability to account for any Confidential Information of the Furnishing Party, the Receiving Party will promptly, at its own expense:

- 15.7.1. notify the Furnishing Party in writing;
- 15.7.2. take such actions as may be necessary or reasonably requested by the Furnishing Party to minimise the violation; and
- 15.7.3. co-operate in all reasonable respects with the Furnishing Party to minimise the violation and any damage resulting there from.

15.8. Return of Confidential Information

SARS may at any time on written instruction to Supplier require that Supplier immediately return to SARS, in a form reasonably acceptable to SARS, and thereafter destroy all remaining copies of SARS Confidential Information in possession of the Supplier's personnel, agents or Subcontractors (including where applicable by electronically deleting the same in such manner that it is completely and utterly irretrievable). In addition SARS may instruct that the Supplier furnishes a written statement to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material and has fully complied with the foregoing return and destruction obligations.

16. DATA PROTECTION

- 16.1. The Supplier acknowledges that in the course of the provision of the Deliverables it may become privy to SARS's Confidential Information.
- 16.2. To the extent that the SARS's Confidential Information needs to be stored on the Supplier's information technology systems, the Supplier shall take appropriate technical safeguards and organisational measures and/or measures prescribed by the Data Protection Agreement, Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS's Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 16.2. on reasonable notice and request.
- 16.3. The Supplier shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS's Confidential Information can be recovered promptly and that the integrity thereof and

any database containing such material can be maintained.

16.4. The Supplier shall ensure that all SARS's Confidential Information and information provided to it by SARS in order to render the Deliverables is stored separately and isolated from data and property relating to the Supplier or any third party (including any other entity with whom the Supplier may conduct business) in accordance with the POPIA, SARS Act and the Applicable Laws.

16.5. The security measures to be taken by the Supplier in terms of Clause 16.2 must –

16.5.1. not be less rigorous than the security safeguards, measures and practices generally maintained by SARS in respect of its data (and as communicated by SARS to the Supplier), or maintained by the Supplier with respect to its own confidential information of a similar nature and/or as prescribed by the Applicable Laws, POPIA and/or Data Protection Legislation; and

16.5.2. enable SARS and the Supplier to conform to Applicable Law, including:

16.5.2.1. Data Protection Legislation;

16.5.2.2. the Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); and

16.5.2.3. the Tax Acts.

16.6. The Supplier hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Supplier of the provisions of this Clause 16.

17. PROCESSING OF PERSONAL INFORMATION

17.1. Without limiting any other provision of this Agreement, the Supplier shall only store, copy or use any SARS Data disclosed to it by SARS pursuant to this Agreement to the extent necessary to perform its obligations under this Agreement.

- 17.2. If at any time the Supplier suspects or has reason to believe that the SARS Data disclosed to it by SARS pursuant to this Agreement has or may become lost or corrupted in any way for any reason then the Supplier shall immediately notify SARS thereof and inform SARS of what remedial action it proposes to take, if any.
- 17.3. The Supplier agrees that, in regard to the SARS Data which SARS obtains from Taxpayers, it shall:
- 17.3.1. Only process the SARS Data in accordance with instructions from SARS (which may be specific instruction or instructions of a general nature as set out in this Agreement or as otherwise notified by SARS to the Supplier from time to time);
 - 17.3.2. Not otherwise modify, amend or alter the contents of the SARS Data or disclose or permit the disclosure of any of the SARS Data to any third party;
 - 17.3.3. Not maintain records of the SARS Data for longer than is necessary in order for the Supplier to comply with its obligations under this Agreement, unless retention thereof for a longer period is required by law or requested in writing by SARS;
 - 17.3.4. Implement and ensure that its agents, sub-contractors and staff members implement appropriate technical and organisational measures to protect the SARS Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to SARS Data and to the nature of the SARS Data which is to be protected;
 - 17.3.5. Process the SARS Data in accordance with any Applicable Law; and
 - 17.3.6. Co-operate as requested by SARS to enable SARS to comply with any exercise of rights by a Taxpayer under Applicable Law in respect of SARS Data Processed by the Supplier under this

Agreement or comply with any assessment, enquiry, notice or investigation under the Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case.

17.4. The Supplier shall provide co-operation in any investigation relating to security which is carried out by or on behalf of SARS including providing any information or material in its possession or control and implementing new security measures, to the extent requested by SARS.

18. PROTECTION OF PERSONAL INFORMATION

18.1. The Parties record and agree that during the term of this Agreement and the Parties will be exposed to Personal Information. Each Party is responsible to protect Personal Information of the other and shall fully comply with the statutory obligations contained in POPIA, with which the Parties warrant that they are fully conversant with at the Effective Date, when Processing Personal Information obtained by the other Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid each Party shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing the Data Subject's Personal Information.

18.2. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Deliverables.

18.3. Each Party shall only provide, collect and/or Process the Personal Information:

- 18.3.1. in compliance with POPIA and where binding on a Party;
 - 18.3.2. as is necessary for the purposes of this Agreement and the Deliverables;
 - 18.3.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
 - 18.3.4. for internal business-related purposes; and
 - 18.3.5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
- 18.4. Both Parties shall:
- 18.4.1. in dealing with the Personal Information either as the Responsible Party, Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Applicable Laws; and/or
 - 18.4.2. where applicable, comply with the specific obligations imposed on them in terms of POPIA in terms of providing the Deliverables as agreed between the Parties;
 - 18.4.3. take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Privacy Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.
- 18.5. No Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party.
- 18.6. The Service Provider shall not be entitled to Process the Personal

Information with any other third party except for the Supplier Personnel, where necessary in order to enable the provision of the Deliverables in connection with this Agreement and the Deliverables.

- 18.7. The Supplier may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Supplier undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Supplier.
- 18.8. Electronic communications between the Supplier and SARS (limited only where the Supplier Personnel are using the Supplier's resources), may be monitored by the Supplier to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 18.9. Electronic communications between SARS and the Supplier and SARS Personnel (limited only where the Supplier Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 18.10. The Supplier shall not Process the Personal Information to:
 - 18.10.1. an outsourced information technology service provider; or
 - 18.10.2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS and compliant with POPIA); or
 - 18.10.3. an Affiliate;
 - 18.10.4. without prior written consent of SARS.
- 18.11. Where consent has been granted in terms of Clause 18.10 above, the Supplier undertakes in relation to Clauses 18.8 and 18.9 and for the Term to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the

same Best Industry Practices and/or protection as is required in terms of Clause 18.3 and the provision of the POPIA Act and/or Data Legislation binding on it (where applicable).

18.12. The Supplier shall be held accountable for Personal Information further Processed by the Supplier Personnel for the purposes set out in the Agreement.

18.13. The Supplier represents and warrants in favour of SARS that:

18.13.1. it has used reasonable measures to ensure POPIA compliance by the Supplier Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and

18.13.2. it has establishment POPIA compliance programme to manage and maintain POPIA compliance.

18.14. For these purposes, , the Supplier hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by the Service Provider and/or breach of any of the provisions of Clauses 16, 17 and 18.

19. WARRANTIES

19.1. NIPP

Supplier represents and warrants that Supplier, if required to do so by the Department of Trade and Industry, shall conclude an agreement with the Department of Trade and Industry as regards the NIPP Commitment to be carried out by Supplier in accordance with the requirements of the NIPP.

19.2. Pass-Through Warranties

19.2.1. Without limiting the generality of its other warranty obligations under this Agreement, with respect to NISD Solutions and components thereto purchased by Supplier from Third Parties, Supplier will pass through to SARS any warranty provided by such Third Party except to the extent prohibited by the terms of such warranty.

19.2.2. Supplier will not take, and will procure that none of the Supplier Personnel

takes, any action or makes any omission that may result in the cancellation of any warranties with respect to a NISD Solution provided by a manufacturer thereof. The Service Provider shall be held solely liable to SARS for any damages suffered by SARS in this regard.

19.3. **Radiation and Safety Standards**

Subject to the provisions of Clause 27.5, Supplier warrants, in respect of each and every NISD Solutions and its related options provided to SARS and in respect of the provision of the Maintenance and support services in terms of this Agreement, as at Acceptance and thereafter, subject to such NISD Solution being maintained solely by the Supplier or its authorised subcontractors and being operated solely in accordance with the NISD Solution specifications:

- 19.3.1. that each NISD Solution shall be and remain compliant with the prescribed safety requirements (including in respect of electricity and road regulations relating to the use and operation of the NISD Solution) and shall not exceed the acceptable levels of radiation, in each instance as set forth in Applicable Law;
- 19.3.2. that each NISD Solution shall comply with and shall remain compliant with the safety standards and shall not exceed the maximum radiation levels as specified in the NISD Solution specifications; and
- 19.3.3. each NISD Solution shall meet the requirements of the relevant international protocols, treaties, and standards as amended and updated from time to time with regard to radiation safety standards and processes relating to the manufacture, use and operation of the NISD Solution, including but not limited to the following:
 - 19.3.3.1. the World Customs Organisation Guidelines for the Procurement and Deployment of Scanning / NII Equipment: September 2020
 - 19.3.3.2. the International Atomic Energy Agency Safety Series 2003 as updated from time to time : "International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources";
 - 19.3.3.3. the International Commission on Radiological Protection the World Health Organisation requirements including the ICRP Report 60: "1990 Recommendations of the International

Commission on Radiological Protection"; and

19.3.3.4. the South African Code of Practice for Industrial Radiography – X-ray Radiography, Department of Health, Directorate of Radiation Control, December 20015

19.3.3.5. Hazardous Substances Act (15. Of 1973) together with Regulation No R.1302, 14 June 1991 as updated from time to time;

19.3.3.6. South African Health Products Regulatory Authority regulations.

19.3.4. The Supplier specifically agrees that the aforementioned warranty shall be applicable for as long as this Agreement remains in force and effect and that accordingly, the warranty period specified in Clause 19.6 shall not be of application for the purposes of Clause.19.3.2

19.4. **Compliance with the Private Security Industry Regulation Act**

Supplier represents and warrants to SARS that it is and will remain, for the Term of this Agreement compliant with Section 20 of the Private Security Industry Regulation Act 56 of 2001 ("PSIRA").

19.5. **Customs Compliance**

Supplier represents and warrants that as of the Effective Date it is and will remain compliant throughout the Term with all Applicable Laws relating to the importation and exportation of goods and Intellectual Property.

19.6. **Products**

19.6.1. Supplier represents and warrants that each NISD Solution it provides to SARS under a Work Order or Change Order will operate in SARS environment in accordance with its specifications and documentation without any material defect or deficiency during a period of 24 months period commencing on the Acceptance date of the NISD Solution, as the case may be, is Accepted by SARS under Clause 3.2 (the 'Warranty Period'). [Reference the SoW for Delivery Test and Acceptance]

19.6.2. If during the Warranty Period the NISD Solution fails to operate in SARS' environment in accordance with its specifications and documentation without any material defect or deficiency, and Supplier fails to remedy such failure within thirty (30) days, SARS may, at its election, require that the

Supplier replace the NISD Solution, with Supplier bearing all costs including shipping, de-installation, installation and the like, with a NISD Solution that does not have such defect or deficiency (the 'Replacement Product'). In such event, the Warranty Period shall be extended on a day-for-day basis to reflect the period commencing on the date of Acceptance of the NISD Solution that was replaced and ending on the date the Replacement Product is Accepted by SARS ('Replacement Warranty Period').

19.6.3. If during the Replacement Warranty Period, the Replacement Product fails to operate in SARS' environment in accordance with its specifications and documentation without any material defect or deficiency, and the successful Supplier fails to remedy such failure within thirty (30) days, in addition to any other remedies that may be available to it, SARS may require that the Supplier de-install the NISD Solution, remove the NISD Solution from SARS' premises, and refund any amounts paid to Supplier with respect to the NISD Solution, and for any services in respect of such NISD Solution.

19.6.4. Where the Supplier is not the OEM, the Supplier represents and warrants that it is duly authorised by the OEM(s) to supply; maintain and support all components of NISD Solutions that it will propose in response to RFQs issued by SARS and in respect of all components that have been supplied under Work Orders and Change Orders under this Agreement. The Supplier shall, on request by SARS, submit documentation to SARS from the OEM confirming the Supplier's authority to supply; maintain and support products manufactured by the OEM. Failure by the Supplier to provide such document to the satisfaction of SARS shall constitute a material breach of this Agreement.

19.7. **Work Standards**

Supplier represents and warrants that it will perform its obligations under this Agreement with promptness and diligence and in a workmanlike manner, in terms of the practices and professional standards used in well-managed operations performing obligations similar to Supplier's obligations under this Agreement. Without limiting the generality of the foregoing, Supplier shall:

19.7.1. assign Supplier Personnel to perform work under this Agreement with respect to a NISD Solution who are, where appropriate, certified or otherwise formally approved by the original equipment manufacturer of components of an NISD Solution;

- 19.7.2. assign Supplier Personnel to perform work under the Agreement who are properly trained, qualified and experienced for such work;
- 19.7.3. perform work in a manner that fully manages the health, safety and environmental risks associated with the operation of Scanners and related options, including radiation exposure; and
- 19.7.4. perform its obligations in accordance with the documentation and otherwise in accordance with Project Management Institute's Project Management Body of Knowledge and Good Industry Practice.

19.8. **Maintenance**

If SARS has ordered Maintenance and Support Services under a Work Order or Change Order with respect to a NISD Solution, Supplier represents and warrants that it shall use only personnel who are certified by the original equipment manufacturer for the performance of such services and maintain the NISD Solution so that it operates in terms of its specifications and documentation, including:

- 19.8.1. maintaining such NISD Solution in good operating condition, subject to normal wear and tear; and
- 19.8.2. undertaking maintenance on such NISD Solution in accordance with its documentation and otherwise in accordance with the practices and professional standards used by well-managed entities maintaining products similar to the NISD Solution, except to the extent directed otherwise by SARS.

19.9. **Non-Infringement**

Supplier represents and warrants that:

- 19.9.1. it shall perform its responsibilities under the Agreement in a manner that does not infringe or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party; and
- 19.9.2. the NISD Solution, documentation, and any other Intellectual Property it provides under this Agreement shall not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party.

19.10. **Authorisation**

19.10.1. SARS represents and warrants to Supplier that:

19.10.1.1. It has the requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and

19.10.1.2. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorised by the requisite action on the part of SARS.

19.10.2. Supplier represents and warrants to SARS that:

19.10.2.1. It has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and

19.10.2.2. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorised by the requisite corporate action on the part of Supplier.

19.10.3. The Supplier further warrants that as at the Effective Date and during the Term: (i) it has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Deliverables under this Agreement; and (ii) it will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Deliverables.

19.11. **Documentation**

Supplier represents and warrants that it shall provide and maintain Documentation so that it:

19.11.1. accurately reflects the operations and capabilities of any and all NISD Solutions sold by Supplier under this Agreement;

19.11.2. is accurate, complete, and written in a manner easily understood by SARS; and

19.11.3. is promptly updated from time to time to reflect any change.

19.12. **Manner of Performance**

Supplier warrants that the Deliverables will at all times be performed in a manner which will: (i) not diminish SARS's reputation; and (ii) not be detrimental to SARS.

19.13. **Business Continuity Deliverables**

Supplier warrants that it has suitable and tested Supplier Business Continuity Plans in place in order to ensure continuity of the Deliverables in the event of a disaster in the Supplier Environment.

19.14. **Supplier Personnel**

Supplier warrants that it will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Deliverables in terms of this Agreement and the Performance Standards.

19.15. **Inducements**

Each Party warrants to the other that it has not violated any Applicable Laws, regulations or policies of the other of which it has been given notice, regarding the offering of unlawful inducements in connection with this Agreement.

19.16. **Disabling Code**

Supplier warrants that:

19.16.1. it will not use, or authorise Third Parties including Subcontractors, to use any code that would have the effect of disabling or otherwise shutting down all or any portion of the Deliverables; and

19.16.2. with respect to any disabling code that may be part of any Software in any way related to the provision of the Deliverables, Supplier will not invoke, or authorise a Third Party to invoke, such disabling code at any time, including upon expiration or termination of this Agreement for any reason.

19.17. **Service Level Measurement**

Supplier warrants that the steps, tools, processes, workflows and interfaces provided in **Appendix C-1 (Service Levels and Credits)** for measuring Supplier's performance against the Service Levels will, on a Service Level by Service Level basis, produce a system of measuring Supplier's performance against the Service

Level that is at least as automated and objective as the most automated and objective system for measuring a similar service level deployed in a comparable, well-managed commercial environment by a professional supplier performing services similar to the Deliverables.

19.18. Tax Compliance

19.18.1. Supplier warrants that as of the Effective Date it and its Subcontractors are in full compliance, and throughout the Term will remain in full compliance, with all Applicable Laws relating to taxation in South Africa.

19.18.2. Supplier undertakes that it will inform SARS should it become aware that Supplier and/or any of its Subcontractors are not tax compliant.

19.18.3. If SARS becomes aware of any such tax non-compliance of Supplier and/or its Subcontractors and should such non-compliance not be remedied within 3 (three) months (or such other shorter period as the Applicable Law may prescribe) after SARS has given notice to Supplier or its Subcontractors to remedy such non-compliance, such non-compliance will be deemed to constitute a material breach of this Agreement by the Supplier.

19.18.4. SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Supplier or SARS may in the alternative (at its sole discretion) upon written notice, require the Supplier to remedy the material breach. In the case of non-compliance by any Subcontractor procure that the Subcontractor immediately ceases providing Deliverables pursuant to the subcontract and that the Supplier terminates the subcontract between Supplier and that Subcontractor. SARS will have no liability to Supplier with respect to a termination under this Clause 19.18.4.

19.19. Legal and Regulatory Compliance

19.19.1. Supplier warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements (as may be amended from time to time) and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Deliverables and/or Deliverables under the Agreement.

19.19.2. Supplier will, within 14 days of the Effective Date, furnish SARS with copies of all regulated licences (including all amendments and renewals as well as

copies of all radio frequency spectrum licences) granted to Supplier by the Independent Communications Authority of South Africa and which are required by Supplier for the provision of the Deliverables to SARS. The details of all licence terms and conditions and other obligations imposed on Supplier which are not contained in Supplier's licences must be furnished in writing by Supplier to SARS.

19.20. **Broad-Based Black Economic Empowerment (“BBBEE”)**

Supplier undertakes and warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with the obligations detailed in **Schedule I (BBBEE)**.

19.21. **Conflicts of Interest**

Supplier warrants that:

19.21.1. neither it nor any member of the Supplier Personnel, will have or will acquire any direct or indirect contractual, financial, business or other interest or advantage that would conflict in any manner or degree with Supplier's performance of its duties and responsibilities to SARS under this Agreement and Supplier will promptly inform SARS of any such interest that may be incompatible with the interests of SARS;

19.21.2. neither it nor any member of the Supplier Personnel, has used or will use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit;

19.21.3. neither it nor any member of the Supplier Personnel, has used or will use any SARS Confidential Information acquired in connection with this Agreement to obtain financial gain, advantage or benefit;

19.21.4. neither it nor any member of the Supplier Personnel has accepted or will accept anything of value or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of the Supplier or Supplier Personnel on behalf of SARS would be influenced thereby;

19.21.5. it will not attempt to influence any SARS Personnel by the direct or indirect offer of anything of value or an inducement; and

19.21.6. neither it nor any member of the Supplier Personnel has paid or agreed to

pay any Person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement, save for such remuneration as is paid to bona fide Supplier Personnel working solely for the Supplier or any of the Supplier's Subcontractors.

20. INSURANCE AND RISK OF LOSS

20.1. Insurance

20.1.1. Supplier will, at its own cost and expense, during the Term have and maintain in force, to the reasonable satisfaction of SARS, sufficient short-term insurance cover to cover all of its obligations and liabilities under this Agreement, consistent with acceptable and prudent business practices, including:

20.1.1.1. insurance cover, in accordance with Supplier's insurance cover as of the date of last signature of this Agreement as disclosed to SARS and attached hereto as **Schedule K (Supplier's Insurance Policies)**, affording sufficient cover in order to cover Supplier's potential liability in terms of Clause 20.1.1; and

20.1.1.2. run-off cover identical to that contemplated in Clause 20.1.1 above, for a period of two (2) years, subsequent to termination or expiration of the term of this Agreement.

20.2. SARS Right to Acquire Insurance in Certain Circumstances

Without limiting the generality of SARS's rights and remedies hereunder, in the event of a failure by Supplier to maintain any insurance required hereunder, or to provide evidence of renewal at least 3 (three) Business Days prior to expiration of the applicable insurance cover, on 3 (three) Business Days' notice to Supplier, SARS may purchase the requisite insurance and deduct the costs thereof from any amounts owed to Supplier under this Agreement.

20.3. Risk of Loss

Supplier will be responsible for risk of loss of, and damage to, any hardware, Software or other assets of SARS that it may have in its possession or under its control. Any hardware or Software in the possession or control of Supplier's Subcontractors or agents (including couriers, freight companies and the like) will be

deemed to be under the control of the Supplier.

21. INDEMNITIES

21.1. Indemnity by Supplier

Supplier hereby indemnifies, holds harmless and agrees to defend SARS and the Government Entities and their respective officers, employees, agents, successors, and assigns, from any and all Losses arising from or in connection with, any of the following:

- 21.1.1. all claims and any actions taken against SARS in respect of Supplier's non-compliance with legislation and regulations within the scope and responsibility of Supplier's provision of the Deliverables.
- 21.1.2. Third Party claims attributable to Supplier's breach of its obligations with respect to Clauses 15 and **Error! Reference source not found.**
- 21.1.3. Third Party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct by Supplier or Supplier Personnel, and claims attributable to errors or omissions for which Supplier is required to insure under Clause 20.1.1 to the extent of the insurance required there under;
- 21.1.4. Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, arising out of or relating to the Deliverables, any deliverable and/or technology used and/or provided by Supplier or its Subcontractors to provide the Deliverables other than technology and Software owned or provided by SARS;
- 21.1.5. Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, alleged to have occurred because of hardware or Software provided to Supplier by SARS to the extent arising from a change in the use or configuration of such hardware or Software by Supplier or its Subcontractors on or after Effective Date;
- 21.1.6. Third Party claims arising from breach of an agreement between Supplier and a Subcontractor or supplier (including claims by the Subcontractor or supplier);
- 21.1.7. Third Party claims arising from: (i) Supplier's failure to observe or perform any duties or obligation in terms of any law, licence, certificate and/or

authorisation relating to any legislation governing labour brokers, personal services companies or personal services trusts; and (ii) any Supplier Personnel instituting any action against SARS in terms of the Labour Relations Act 66 of 1995, in each case in the event that, in the performance of the Deliverables, Supplier is found to be a labour broker, personal services company, or a personal services trust;

- 21.1.8. Claims brought by any Supplier Personnel based upon any act by Supplier, its employees, agents and/or its Subcontractors on or after the Effective Date including, without limitation, any claim relating to the failure to appoint or promote employees by Supplier, claims for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or refusal to pay severance or notice pay or termination payments upon leaving Supplier's employ;
- 21.1.9. Third Party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person caused by the negligent or wilful conduct of Supplier;
- 21.1.10. Third Party claims arising from or related to damage to tangible personal or real property including computer data, data loss or any other damage, notwithstanding the form in which any such action is brought (e.g. contract, delict or otherwise), to the extent such injuries or damages arise directly or indirectly from acts, errors or omissions that constitute negligence, wilful misconduct or a contravention of law, by Supplier and/or Supplier Personnel, agents and/or Subcontractors;
- 21.1.11. any Third-Party claim, demand, charge, action, cause of action, or other proceeding asserted against SARS in SARS's capacity as an employer of a person resulting from an act or omission of Supplier

21.2. **Infringement**

If any item used by Supplier to provide the Deliverables becomes, or in Supplier's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Supplier will, in addition to indemnifying SARS as provided in Clause 21.1 and to the other rights SARS may have under this Agreement or otherwise, promptly take the following actions, at no additional charge to SARS, in the listed order of priority: (a) secure the right to continue using the item; (b) replace or modify the item to make it non-infringing, provided that

replacement or modification must not degrade performance or quality or increase SARS's costs; or (c) remove the item from the Deliverables in which case Supplier's Charges will be equitably adjusted to reflect such removal.

21.3. **Indemnification Procedures**

With respect to Third Party claims, the following procedures will apply:

21.3.1. **Notice:** Promptly after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which SARS may seek indemnification in terms of this Clause 21, SARS will notify the Supplier of such claim in writing. No failure to so notify the Supplier will relieve the Supplier of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within 15 (fifteen) days after receipt of notice from SARS relating to any claim, but (to the extent possible) not later than 10 (ten) days before the date on which any response to a complaint or summons is due, the Supplier will notify SARS in writing if the Supplier elects to assume control of the defence and settlement of that claim ("**Notice of Election**").

21.3.2. **Procedure Following Notice of Election:** If the Supplier delivers a Notice of Election relating to any claim within the required notice period, the Supplier will be entitled to have sole control over the defence and settlement of such claim; provided that: (i) SARS will be entitled to participate in the defence of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the Supplier will obtain the prior approval of SARS before entering into any settlement of such claim or ceasing to defend against such claim. After the Supplier has delivered a Notice of Election relating to any claim in terms of the preceding paragraph, the Supplier will not be liable to SARS for any legal expenses incurred by SARS in connection with the defence of that claim. In addition, the Supplier will not be required to indemnify SARS for any amount paid or payable by SARS in the settlement of any claim for which Supplier has delivered a timely Notice of Election if such amount was agreed to without the consent of the Supplier.

21.3.3. **Procedure Where No Notice of Election Is Delivered:** If the Supplier does not deliver a Notice of Election relating to any claim within the required notice period, SARS will have the right to defend the claim in such

manner as it may deem appropriate, at the cost and expense of the Supplier. The Supplier will promptly reimburse SARS for all such costs and expenses.

21.3.4. Regardless of the provisions of this Clause 21.3, (i) SARS will be entitled, prior to permitting the Supplier control over the defence and settlement of the claim in terms of Clause 21.3.2 above, to require the Supplier to furnish SARS with security in such form and to such amount as SARS at its discretion may require to ensure that SARS is able to meet the full value of all amounts and costs which may be awarded against SARS or for which SARS may become liable; and (ii) SARS will be entitled to withdraw control of the defence and settlement of the claim if SARS at its discretion but acting reasonably, considers that any act or omission of the Supplier or the control of the defence and settlement by the Supplier may in any way be adverse to SARS's good name and reputation.

22. LIABILITY

22.1. General Intent

Subject to the specific provisions of this Clause 22 and any countervailing provisions in this Agreement, it is the intent of the Parties that each Party will be liable to the other Party for any actual damages incurred by such Party as a result of the other Party's failure to perform its obligations in the manner required by this Agreement.

22.2. Liability Restrictions

22.2.1. Subject to Clause 22.2.3 below, in no event will a Party be liable for indirect, special, consequential, punitive or exemplary damages or lost profits, or lost revenues, even if such Party has been advised of the possibility of such damages in advance.

22.2.2. Subject to Clause 22.2.3, each Party's liability to the other Party with respect to a claim or series of related claims, losses, damages or liability in any way arising out of this Agreement, regardless of form or cause of action, will be limited to all Losses which constitute direct and/or general damages.

22.2.3. The limitations set out in Clauses 22.2.1 and 22.2.2 will not apply with respect to:

- 22.2.3.1. damages occasioned by the wilful misconduct or negligence of Supplier and/or Supplier Personnel;
 - 22.2.3.2. damages occasioned by a Party's breach of Clause 15;
 - 22.2.3.3. damages occasioned by: (i) unlawful termination of this Agreement; or (ii) abandonment of the Deliverables by Supplier in whole or in part;
 - 22.2.3.4. damages occasioned by breach of Personal Information and Data Protection Legislation;
 - 22.2.3.5. claims of personal injury or death, including indemnification for a Third Party personal injury claim;
 - 22.2.3.6. Service Level Credits; and
 - 22.2.3.7. damages occasioned by a claim against which Supplier indemnifies SARS.
 - 22.2.3.8. Where such damages are caused by any breach of confidentiality, SARS Intellectual Property, Third Party Intellectual Property.
- 22.2.4. Each Party will have a duty to mitigate damages for which the other Party is responsible.

22.3. **Force Majeure**

- 22.3.1. Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent that: (i) the default or delay is caused, directly or indirectly, by fire, flood, elements of nature or acts of God, or any other cause beyond the reasonable control of the Party; and (ii) the non-performing Party is without fault and the default or delay could not have been prevented by reasonable precautions ("**Force Majeure Event**"). Subject to Clause 22.3.2, in such event, the non-performing Party is excused from further performance for as long as such circumstances prevail and provided the non-performing Party continues to use its Commercially Reasonable Efforts to recommence performance. Any Party so delayed will notify the Party to whom performance is due and describe the circumstances causing the delay.
- 22.3.2. If a Force Majeure Event substantially prevents or delays performance of the Deliverables or any part thereof necessary for the performance of

SARS functions that SARS at its discretion reasonably believes to be critical at reasonable levels of service for more than 5 (five) consecutive days (or such longer period as SARS may agree at its sole discretion), then at SARS's option, SARS may:

- 22.3.2.1. at its expense procure the Deliverables in question from an alternate source, in which case SARS will be relieved of its obligation to pay Supplier for such Deliverables for so long as Supplier's performance is impaired;
 - 22.3.2.2. terminate the portion of the Agreement affected as of a date specified by SARS and the Charges will be equitably reduced to reflect the termination of the terminated Deliverables; or
 - 22.3.2.3. if a substantial portion of the Deliverables is affected, terminate the Agreement as of a date specified by SARS in a written notice to Supplier.
- 22.3.3. Termination of the Agreement under Clause 22.3.2 will not be treated as a termination for convenience. SARS will have no liability to Supplier for terminating the Agreement.
- 22.3.4. Supplier will not be entitled to rely on the provisions of this Clause 22.3 as a result of any failed performance by Subcontractors, unless the Subcontractor's failure to perform was caused by a Force Majeure Event and the Subcontractor has made and continues to use its Commercially Reasonable Efforts to recommence performance.

23. AUDITS

23.1. Audit Rights

- 23.1.1. Supplier and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. Supplier will provide to SARS, its internal or external auditors, inspectors and regulators access at all reasonable times to any facility or part of a facility at which either Supplier or any of its Subcontractors is providing the Deliverables, to Supplier Personnel, and to equipment, Software, personnel, data, records and documentation, including agreements between Supplier and its Subcontractors, relating to the Deliverables for the purpose of performing audits and inspections of either Supplier or its

Subcontractors to: (i) verify the accuracy of Supplier's Charges and invoices; (ii) verify the accuracy of payments by or credits from Supplier; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Supplier's costs or changes thereto; (iv) verify the integrity of, and examine the systems that process, store, support and transmit SARS data; (v) examine Supplier's performance of the Deliverables, including verifying compliance with the Performance Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any legislative, judicial or regulatory authority having jurisdiction; (viii) to the extent applicable to the Deliverables performed by Supplier and/or the Charges therefore, examining: (a) practices and procedures, (b) systems, (c) general controls, and (d) the efficiency of Supplier's operation; and (ix) any other audit reasonably required by SARS.

23.1.2. SARS will not use a competitor of Supplier to perform an audit under this Clause 23 without Supplier's prior approval; provided, however, that the Parties specifically agree that the audit arms of the major accounting firms will not be treated as competitors of Supplier.

23.1.3. Supplier will provide to the auditors, inspectors and regulators such assistance as they may require, including installing and operating audit Software. In the case of audits other than audits conducted by or on behalf of legislative, judicial or regulatory authorities, SARS's audits will not unreasonably interfere with Supplier's normal course of business and will comply with the Supplier's reasonable confidentiality requirements.

23.1.4. Unless SARS has a good faith suspicion of fraud, SARS will provide Supplier with reasonable notice for audits other than security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities. Audits will take place during Business Hours, provided that security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities may take place outside normal business hours at SARS's sole discretion.

23.1.5. All costs incurred by SARS in performing audits of Supplier will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, in which event the cost of such audit will be borne by Supplier.

23.1.6. If an audit reveals an overcharge, Supplier will promptly refund the overcharge plus interest at the Agreement Interest Rate or 15% (fifteen percent) per annum, whichever is the highest, from the date of payment of the overcharge through the date the overcharge is refunded by Supplier.

23.1.7. All Subcontractors will be obliged to comply with the provisions of this Clause 23. If Supplier seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this Clause 23, Supplier will: (i) notify SARS of the prospective Subcontractor's refusal to grant such rights; (ii) identify the audit rights the prospective Subcontractor is willing to grant; and (iii) obtain SARS's review and approval of such subcontract. SARS reserves the right to withhold its approval of any subcontract at its sole discretion, and Supplier will be obliged to continue providing the Deliverables in accordance with the Performance Standards, notwithstanding SARS's decision to withhold such approval.

23.2. **Audit Follow-Up**

23.2.1. Following an audit or examination, SARS or its external auditors will meet with Supplier to obtain factual concurrence with issues identified in the audit or examination.

23.2.2. Within 10 (ten) Business Days following the provision to Supplier of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by Supplier's auditors, the Supplier will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to Supplier. The Audit Response Plan will identify the steps that Supplier will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, Supplier will implement such Audit Response Plan at Supplier's cost and expense. Supplier will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of the Agreement.

23.2.3. Supplier will promptly make available to SARS the results of any reviews or audits conducted by Supplier, its Affiliates or their Subcontractors, agents

or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Deliverables.

23.2.4. Promptly after the issuance of any audit report or findings issued under Clause 23.2.3, the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

23.3. **Records Retention**

Supplier will maintain and provide SARS with access to the records, documents and other information required to meet SARS's audit rights under the Agreement until the later of: (i) 3 (three) years after expiration or termination of the Agreement; (ii) all pending matters related to the Agreement are closed; or (iii) such other period as required by Applicable Law.

24. **BENCHMARKING**

24.1. SARS has the right, at its option and not more than once in each Contract Year but not at all within the first 12 (twelve) months of the Commencement Date of a Work Order, to initiate a benchmarking process, in respect of some or all of the Deliverables, in order to evaluate and measure the extent to which SARS is receiving the Deliverables competitively. Such benchmarking exercise includes evaluating the following:

24.1.1. general service levels applicable in Non-intrusive Inspection Scanning and Detection industry including those Service Levels set forth in this Agreement, and to ensure that the Supplier's achievement with regard to such service levels fall into the best (most favourable to SARS) quartile of assessed service levels of suppliers benchmarked in the benchmarking exercise; and/or

24.1.2. the Charges set forth in this Agreement and the Work Order and Change Orders to this Agreement, and to ensure that such Charges fall into the lowest (most favourable to SARS) quartile of assessed charges made for similar Deliverables, including the Service Levels, by suppliers benchmarked in the benchmarking exercise.

24.2. **General Rules for Benchmarking**

24.2.1. SARS may request a benchmark of any specific component or all components of the Deliverables. SARS will appoint the Benchmarker to

conduct the benchmarking exercise.

- 24.2.2. Supplier agrees (as part of the Deliverables) to co-operate fully with the Benchmarker performing the benchmarking exercise and to promptly provide all data, documentation, records and resources necessary or relating to the provision of the Deliverables to SARS requested by the Benchmarker.
- 24.2.3. SARS will direct the Benchmarker to select a representative sample of transactions to use in the benchmarking, which may include some transactions for which Supplier is also a supplier and to perform any normalisation that the Benchmarker deems at its sole discretion to be necessary.
- 24.2.4. The Benchmarker will enter into a confidentiality agreement with the Parties on terms reasonably acceptable to both Parties prior to being provided with Confidential Information of either Party.
- 24.2.5. The Benchmarker will be directed to use Commercially Reasonable Efforts to complete its analysis within 90 (ninety) days after its engagement, to the extent practical.
- 24.2.6. Unless otherwise agreed by the Parties, the Benchmarker will perform the benchmarking exercise in accordance with the Benchmarker's documented methodologies and procedures which will be provided to the Parties prior to the commencement of the benchmarking exercise. The Benchmarker may (but is not obligated to) discuss such methodologies and process with the Parties. Any such discussions may be with both Parties simultaneously. The Benchmarker will be free to reflect or not to reflect the Parties' input at its discretion.

24.3. **Benchmarking findings**

- 24.3.1. At the end of each such benchmarking process the Benchmarker will make recommendations as to the required improvements and acceptable time scales for the implementation thereof and Supplier will (as part of the Deliverables) be obliged to implement such recommendations in accordance with those time scales at no additional cost to SARS. Each Party will be provided a reasonable opportunity to review, comment on and request changes in the Benchmarker's proposed findings. The Benchmarker will have sole discretion as to how it addresses such

comments and requests. Following such review and comment, the Benchmarker will issue a final report of its findings and conclusions.

- 24.3.2. For the avoidance of doubt and notwithstanding any benchmarking results or recommendations, there will be no adjustment to any Charges having the effect of an increased amount payable by SARS or any adjustment of any Service Levels having the effect of the performance of the Deliverables being less favourable to SARS as a result of the benchmarking exercise.
- 24.3.3. If a benchmarking exercise reveals that the performance under the Agreement is less favourable than that of benchmarked suppliers falling into quartile of best performance, then the Service Levels will be adjusted to eliminate such variance or additional Service Levels will be incorporated into **Schedule C (Service Levels)** and its appendices to ensure the performance of the Deliverables would fall into the best quartile of benchmarked suppliers. The adjustments to Service Levels or the incorporation of additional Service Levels will be made according to the recommendations, including timelines, made by the Benchmarker provided that should the Supplier dispute the recommendations made by the Benchmarker, such dispute must be resolved in accordance with Clause 25.
- 24.3.4. If a benchmarking exercise reveals that the Charges under the Agreement exceed those charges made for any component of the Deliverables by suppliers not falling into the quartile of lowest charges the Supplier will reduce the Charges sufficiently to ensure the Charges fall into the quartile of lowest Charges amongst the benchmarked suppliers provided that should the Supplier dispute the recommendations made by the Benchmarker, such dispute must be resolved in accordance with Clause 25.
- 24.3.5. SARS will be responsible for the Benchmarker's charges in respect of a benchmarking exercise unless that benchmarking exercise reveals the Charges are to be reduced as contemplated in Clause 24.3.4, in which case Supplier will reimburse SARS for the Benchmarker's charges. If a benchmarking exercise does not show that Charges are required to be reduced, findings will be and will remain the Confidential Information of SARS. Except as aforesaid, each Party will bear its own direct costs in relation to the benchmarking exercise.

24.3.6. If the Parties fail to reach agreement on the implementation of the adjustment set out in Clause 24.3.3 or 24.3.4, SARS will have the right, in addition to any remedies it may have in terms of this Agreement, to terminate the Agreement early by providing a notice of termination to the Supplier setting forth the applicable Termination Date. A termination of the Agreement under this Clause 24.3.6 will not be treated as a termination for convenience. SARS will have no liability to Supplier for terminating the Agreement.

25. DISPUTE RESOLUTION

A dispute of whatsoever nature between the Parties arising out of or in connection with this Agreement, including disputes: (i) as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement; (ii) as to the Parties' rights and/or obligations in terms of this Agreement; or (iii) in connection with any documents furnished by the Parties in terms of this Agreement, will be finally settled as provided in this Clause 25.

25.1. Informal Dispute Resolution

25.1.1. Prior to the initiation of formal dispute resolution procedures, the Parties will first attempt to resolve their dispute informally in accordance with the procedure set forth in this Clause 25.1.

25.1.2. Upon the written request of a Party, any dispute, which arises between the Parties, will be referred to a joint committee consisting of the SARS nominated person and a senior representative of the Supplier nominated by Supplier. The joint committee will meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate in connection with its resolution.

25.1.3. The SARS nominated person and the senior representative of Supplier contemplated in Clause 25.1.3 will discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, will be honoured in order that each of the Parties may be fully advised of the other Party's position. The specific format for the discussions

will be left to the discretion of the joint committee.

25.1.4. Formal proceedings for the resolution of a dispute may not be commenced until the SARS nominated person or the senior representative of Supplier contemplated in Clause 25.1.2 conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely.

25.1.5. In the event that the informal dispute resolution process fails, a Party may either approach a competent court for relief or alternatively the Parties may, by agreement, refer the dispute to formal dispute resolution in accordance with Clause 25.2. Once the Parties have committed to formal dispute resolution, the Parties irrevocably consent to any proceedings in terms thereof.

25.2. **Formal Dispute Resolution**

Any dispute which is not resolved in the manner referred to in Clause 25.1, may be submitted to binding arbitration before a single arbitrator and will be subject to the rules of the Arbitration Foundation of Southern Africa.

25.2.1. The arbitrator will, if the dispute is:

25.2.1.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years standing as such;

25.2.1.2. primarily an technical matter, be an independent technical expert of not less than 10 (ten) years' experience in the telecommunications and related environment;

25.2.1.3. primarily a legal matter, be an attorney of not less than 15 (fifteen) years standing as such or a practising senior counsel.

25.2.2. The Parties will, within 3 (three) days of the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator to be appointed. Should the Parties be unable to reach agreement as contemplated within such 3 (three) day period, the arbitrator will (irrespective of the nature of the dispute) be appointed by the chairman of the Arbitration Foundation of Southern Africa or its successor-in-title upon request by either Party. The appointment of the arbitrator (whether by agreement or by the chairman of the Arbitration Foundation of Southern Africa or its successor-in-title as contemplated in the preceding sentence)

will be final and conclusive and may not subsequently be challenged on any grounds by either Party.

25.2.3. The arbitration will be held as soon as is reasonably possible, with a view to completion within 30 (thirty) days of it being demanded.

25.2.4. Promptly after appointment of the arbitrator, either Party will be entitled to call upon the arbitrator to set: (i) the date(s) on which the arbitration is to be held; and (ii) the procedure that will govern the arbitration. The arbitration proceedings will be held in Johannesburg, Republic of South Africa.

25.2.5. Any order or award that may be made by the arbitrator:

25.2.5.1. will be final and binding;

25.2.5.2. will be carried into effect; and

25.2.5.3. may be made an order of any competent court.

25.3. **Interim Relief**

Nothing in this Clause 25 will preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

25.4. **Continued Performance**

SARS reserves the right to withhold payment of amounts it disputes in good faith under Clause 3.3 of **Schedule D (Pricing, Invoicing and Payments)**, and to terminate the Agreement while the dispute is being resolved. Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved, unless SARS terminates the Agreement as aforesaid.

26. **TERMINATION**

26.1. **Termination for Cause by SARS**

26.1.1. SARS may, by giving notice to Supplier, terminate this Agreement, in whole or in part (provided that SARS will not terminate the Agreement in part unless the Deliverables being terminated include the Deliverables with respect to which the termination for cause occurred), as of a date set out in the notice of termination, in the event that:

26.1.1.1. Supplier commits a material breach of this Agreement, which breach is not cured within 30 (thirty) days after notice of breach

- from SARS to Supplier;
- 26.1.1.2. Supplier commits a material breach of this Agreement that is not capable of being cured within 30 (thirty) days;
 - 26.1.1.3. Supplier commits a non-material breach of this Agreement, which breach is not cured within 90 (ninety) days after notice of breach from SARS to Supplier;
 - 26.1.1.4. Supplier regularly commits breaches of this Agreement and fails to prevent reoccurrences of such breaches within 90 (ninety) days after notice from SARS to Supplier, that such breaches together with any future breach will collectively constitute a material breach;
 - 26.1.1.5. Supplier fails to meet the same Service Level for 3 (three) consecutive months, or if Supplier fails to meet the same Service Level for 4 (four) months, not necessarily consecutive, out of any 12 (twelve) consecutive month period; and/or
 - 26.1.1.6. Supplier is placed under provisional or final liquidation; placed under judicial management; enters into an arrangement with its creditors; or Supplier enters into business rescue procedures under Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008).
- 26.1.2. In the case of a termination of the Agreement in part, the charges payable under this Agreement will be reduced in terms of Clause 13 of **Schedule D (Pricing, Invoicing and Payments)** to reflect the partial termination of the Agreement.
- 26.1.3. SARS may terminate this Agreement, by giving 30 (thirty) days' notice to Supplier, in whole or in part (provided that SARS will not terminate the Agreement in part unless the Deliverables being terminated include the Deliverables with respect to which the termination occurred), if with respect to a Fiscal Year, SARS is unable to obtain funding for the Charges under this Agreement for such Fiscal Year.
- 26.1.4. SARS may immediately terminate this Agreement, by giving notice to Supplier, if Supplier fails to comply with Clauses 15,16,17,18 or 19.18.
- 26.1.5. SARS will have no liability to Supplier with respect to a termination under this Clause 26.1.

26.2. **Termination for Cause by Supplier**

26.2.1. In the event that SARS fails to pay Supplier undisputed amounts or amounts which have been finally adjudged to be due under this Agreement and fails to make such payment within 90 (ninety) days of the later of: (i) notice from Supplier of the failure to make such payment; or (ii) the date that an amount is finally adjudged to be due under the Agreement, then Supplier may, by giving notice to SARS, terminate this Agreement as of a date set out in the notice of termination.

26.2.2. Supplier will have no right to terminate this Agreement other than in accordance with the provisions of Clause 26.2.1 above.

26.3. **Termination for Convenience**

Unless otherwise agreed between the Parties or otherwise provided in this Agreement SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving Supplier at least 90 (ninety) days prior notice designating the Termination Date. SARS will have no liability to Supplier with respect to such termination.

26.4. **Termination upon Sale, Acquisition, Merger or Change of Control**

In the event of a sale, acquisition, merger, or other change of Control of Supplier where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of Supplier in a single or series of related transactions, then SARS may terminate this Agreement by giving Supplier at least 90 (ninety) days prior notice and designating a date upon which such termination will be effective. SARS will have no liability to Supplier with respect to such termination.

26.5. **Extension of Termination Effective Date**

SARS will, not later than 90 (ninety) days (or 30 (thirty) days in the case of a termination for cause) prior to expiration or termination of the Agreement, have the option to require that Supplier continues to provide some or all of the Deliverables for a fixed term of up to 180 (one hundred and eighty) days following the effective date of expiration or termination of the Agreement on the terms and conditions (including price as adjusted in accordance with Clause 10 of **Schedule D (Pricing,**

Invoicing and Payments)) then in effect.

26.6. **Disengagement Assistance**

The Parties will comply with their respective obligations set forth in **Schedule F (Disengagement Assistance)**.

27. **GENERAL**

27.1. **Viruses**

Supplier undertakes that it will use all Commercially Reasonable Efforts to ensure that no Bugs, Viruses or similar items are coded or introduced into the systems used to provide the Deliverables, and/or into any SARS systems. In the event a Bug or a Virus is found the Supplier will at no additional charge to the extent commercially reasonable, assist SARS to reduce the effects of such Bug or Virus and, if such Bug or Virus causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

27.2. **Binding Nature and Assignment**

This Agreement will be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or will have the power to, assign this Agreement without the consent of the other, except that SARS may assign its rights and obligations under this Agreement without the approval of Supplier to another Government Entity.

27.3. **Non-Solicitation**

During the Term, and for a period of 1 (one) year thereafter, Supplier will not directly solicit or encourage, or attempt to solicit or encourage any employee of SARS to leave the employment of SARS unless prior consent is obtained from SARS, which will not be unreasonably withheld.

27.4. **Entire Agreement; Amendment**

27.4.1. Any commitments made by Supplier in its response to the Request for Proposal, which is attached hereto as **Schedule H (Supplier Proposal)** will be deemed binding on Supplier. Notwithstanding anything to the contrary stated in the Supplier's response, in the event of a conflict between the Supplier's response and this Agreement, the Agreement will

prevail and nothing in the Supplier's response will in any way limit SARS's rights or expand SARS's obligations under this Agreement.

27.4.2. This Agreement, including any schedules, appendices and attachments referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. For the avoidance of doubt, the Supplier's standard terms will not apply to the Deliverables.

27.4.3. No variation or consensual cancellation of this Agreement, including to this Clause 27.4.3, and no addition to this Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

27.5. **Compliance with Applicable Laws**

27.5.1. **Governing Law**

This Agreement will in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the Republic of South Africa.

27.5.2. **General Obligation**

Each Party will perform its obligations in a manner that complies with the Applicable Laws (including identifying and procuring required permits, certificates, approvals and inspections).

27.5.3. **SARS's Rules and Regulations**

Supplier will perform its obligations in a manner that complies with SARS's safety, security, environmental and health rules and regulations as from time to time identified by SARS to Supplier.

27.5.4. **Monitoring and Changes to Law**

27.5.4.1. As part of the Deliverables, Supplier will monitor Applicable Laws that apply to comparable suppliers generally, Third Party suppliers generally and corporations in South Africa generally to identify any proposed changes to Applicable Law. Supplier will remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over

the Supplier, or any industry body in which the Supplier participates.

27.5.4.2. Upon identifying or being notified by SARS of a change or proposed change described in Clause 27.5.4.1, Supplier will promptly analyse the impact of such change or proposed change on the Deliverables, notify SARS of such impact, and propose changes to the Deliverables to SARS, if any, that are, or in the case of a proposed change may be, required. Supplier will be solely responsible for any fees, costs or expenses incurred in this regard. SARS will promptly review such proposal, and upon SARS's approval, Supplier will promptly implement such changes to the Deliverables as well as any other changes requested by SARS and reasonably required as a consequence of a change described in Clause 27.5.4.1.

27.5.4.3. In the event that Supplier establishes to SARS's reasonable satisfaction that a change in Applicable Laws after the Effective Date (other than a change in Applicable Laws described in Clause 27.5.4.1) directly and materially increases the cost to Supplier of providing the Deliverables in terms of the Service Levels, Supplier will be entitled to propose amendments to appropriate clauses of **Schedule D (Pricing, Invoicing and Payments)** under which Supplier's Charges would be increased on a prospective basis, but not in excess of the amount required for Supplier to recover the additional costs solely and directly attributable to the change in Applicable Laws under this Clause 27.5.4.3. If SARS is unwilling to agree to such an increase in Supplier's Charges, SARS may terminate the affected Work Order; Change Order; or the Agreement in whole, as of a date set out in a notice from SARS to Supplier. Such a termination will not be treated as a termination for convenience and SARS will not be liable for the payment of any termination fees.

27.5.5. Non-Compliance

27.5.5.1. If either Party is charged with non-compliance of any Applicable Laws, the Party charged with such non-compliance will

promptly notify the other Party of such charges in writing.

27.5.5.2. Supplier will be solely responsible for any fines and penalties imposed on Supplier or SARS resulting from Supplier's failure to comply with the provisions of this Clause 27.5.

27.6. Notices

27.6.1. Each Party chooses as its *domicilium citandi et executandi* for all purposes of this Agreement, including for purposes of serving any court process or other documents, giving any notice or making any other communications will be as follows:

In the case of SARS:

Office of the Commissioner

Block A

299 Bronkhorst Street

Nieuw Muckleneuk

Pretoria

0181

(marked for the urgent attention of the Group Executive, Corporate Legal Services)

Facsimile:

Office of the Commissioner

(012) 422 5250 (marked for the urgent attention of the Group Executive, Corporate Legal Services)

with a copy to: **[Note to Bidder: to be completed upon finalisation after award]**

In the case of Supplier:
[Note to Bidder: to be completed upon finalisation after award]

[Note to Bidder: to be completed upon finalisation after award]

Facsimile:
[Note to Bidder: to be completed upon finalisation after award]

[Note to Bidder: to be completed upon finalisation after award]

with a copy to:
[Note to Bidder: to be completed upon finalisation after award]

[Note to Bidder: to be completed upon finalisation after award]

- 27.6.2. All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), will be valid and effective only if in writing. Such notices, requests, demands and determinations under this Agreement will be deemed duly given only when delivered by hand during ordinary Business Hours to a responsible person at the addressee's *domicilium*. Such notices, requests, demands and determinations under this Agreement may also be sent by facsimile to the facsimile number set out in Clause 27.6. Notices, requests, demands and determinations sent by facsimile and received prior to 13h00 on a Business Day will be deemed duly given on such Business Day; notices, requests, demands and determinations sent by facsimile and received at other times will be deemed duly given on the first Business Day following the date that such facsimile is received.
- 27.6.3. Either Party may by notice to other Party change its *domicilium* to another physical address in the Republic of South Africa and the change will take effect on the seventh day after the date when the notice is duly given.
- 27.6.4. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, neither formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

27.7. **Relationship of Parties**

- 27.7.1. Supplier, in furnishing the Deliverables hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
- 27.7.2. Neither Party's Personnel will be deemed personnel of the other Party.
- 27.7.3. Nothing contained in this Agreement will be construed as creating any company, close corporation, joint venture, partnership or association of any kind involving SARS or Supplier or their Affiliates; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its Affiliates' behalf with regard to the other Party and its Affiliates other than as specifically set out herein.
- 27.7.4. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) will have the authority or right, nor will any Party

hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

27.8. Restatement and Severability

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by an arbitrator or a court with jurisdiction over the Parties, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in terms of Applicable Laws, or if not possible, then to be severed from the remainder of the Agreement. The remainder of this Agreement will remain in full force and effect.

27.9. Consents and Approval

27.9.1. Any approval, acceptance, consent or similar action required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.

27.9.2. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where this Agreement sets forth a standard by which a plan is to be developed, Supplier will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.

27.10. Penalties

Wherever a provision of this Agreement stipulates for, or operates as, a penalty in favour of SARS: (i) Supplier waives, to the fullest extent permitted by law, any right it may have to claim a reduction of such penalty; and (ii) SARS will be entitled to at any time claim damages in lieu of such penalty.

27.11. Waiver of Default and Cumulative Remedies

27.11.1. A delay or omission by either Party hereto to exercise any right or power

under this Agreement will not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the undertakings to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other undertaking herein contained. No waiver by SARS will be valid unless reduced to writing and signed by the SARS Contract Executive or his or her designee.

27.11.2. Except as otherwise expressly provided herein, all remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

27.12. Survival

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect.

27.13. Public Disclosures

27.13.1. No advertising or publicity matter of either Party having or containing any reference to the other Party or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party) will be made by or for a Party or Subcontractors without first obtaining written approval from the other Party.

27.13.2. Supplier may not use the SARS logo or any other service marks or trademarks of SARS.

27.14. Third Party Beneficiaries

Except as set out in this Agreement, this Agreement is entered into solely between, and may be enforced only by, SARS and Supplier. This Agreement will not be deemed to create any rights in Third Parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such Third Parties.

27.15. Undertaking against Cession, Pledging and Assignment

Supplier will not, without SARS's prior consent, assign, cede, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from SARS under this Agreement for any reason whatsoever.

27.16. Performance Bond

27.16.1. Supplier will post on the Commencement Date of a Work Order, a performance bond ("**Performance Bond**") by a financial institution approved by SARS and in the form prescribed by SARS, or if SARS does not prescribe a form, in a form proposed by Supplier and approved by SARS at its sole discretion (regard being had to Clause 27.16.7). Notwithstanding the generality of the above, such Performance Bond will secure Supplier's obligations in an amount equal to _____ **[Note to Bidder: This will be an amount equal to 10% of each Work / Change Order value awarded to the Bidder, this amount will be determined based on the Bidder's response to an RFQ]**

27.16.2. SARS shall be entitled to make a claim for payment from the Performance Bond in the event that:

27.16.2.1. the Supplier materially breaches this Agreement, and the breach is reasonably capable of being remedied and Supplier fails to remedy such breach within 30 (thirty) days of being called upon by SARS to do so;

27.16.2.2. the breach is not capable of being remedied;

27.16.2.3. an event occurs in respect of which this Agreement permits SARS to recover a penalty or similar service credit from the Supplier and the Supplier fails to pay such penalty when it is due in terms of this Agreement; and/or

27.16.2.4. an Insolvency Event occurs in respect of the Supplier.

27.16.3. For the avoidance of doubt, any claim that SARS may be entitled to make under the Performance Bond will be subject to: (i) the indemnities and limitations of liability contained in Clauses 21 and 22; and (ii) the Performance Bond claims procedure contained in this Clause 27.16.

27.16.4. The Supplier shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having furnished the Performance Bond.

27.16.5. If SARS intends to en-cash the Performance Bond, it must demand, on 15 (fifteen) days written notice, payment from the Supplier, specifying:

27.16.5.1. the cause of the claim, and

27.16.5.2. the amount claimed.

27.16.6. If the Supplier disputes any aspect of the claim the Parties agree that the dispute resolution provisions of Clause 25 of this Agreement shall apply to such dispute.

27.16.7. If SARS encashes the Performance Bond in terms of Clause 27.16.2, SARS will be entitled to recover from the proceeds of the Performance Bond all of: (i) SARS's Losses occasioned by the Supplier; (ii) all amounts for which the Supplier is liable in terms of any indemnities given by it to SARS; (iii) all penalties which SARS is entitled to impose upon Supplier; (iv) all legal costs which SARS is entitled to recover from Supplier in asserting SARS's rights under this Agreement and the Performance Bond; and (v) any other amounts which may be owing by Supplier to SARS, of whatever nature and however arising; provided always that the provisions of this Clause 27.16.7 will never be construed as in any way limiting SARS's right of recovery to the full value of the Performance Bond.

27.16.8. In the event of SARS:

27.16.8.1. cancelling the Agreement pursuant to any matter referred to in Clause 27.16.2, after SARS has recovered all amounts which may be owing to SARS by Supplier in terms of Clause 27.16.7, SARS will pay the balance, if any, to Supplier;

27.16.8.2. not cancelling the Agreement pursuant to any matter referred to in Clause 27.16.2 Supplier will deliver to SARS, within 10 (ten) Business Days of SARS's written instruction, a new Performance Bond for the same value as that of the original Performance Bond (and for which purpose Clause 27.16 will again apply, *mutatis mutandis*) against delivery of which SARS will pay to the Supplier the balance, if any, of the amounts remaining from the previous Performance Bond following SARS's recovery of the amounts owing to it in terms of Clause 27.16.7.

27.16.9. The Performance Bond in respect of a Work / Change Order will automatically be revoked on expiry of a period of 6 (six) months after the termination or expiry of the Work / Change Order; or termination of the Agreement.

27.17. Covenant of Good Faith

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it will, to the extent not otherwise specifically stated, act reasonably and act in good faith.

27.18. Counterparts

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement between the Parties hereto.

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DRAFT

IN WITNESS WHEREOF SARS and **[Supplier name]** have each caused this Agreement to be signed and delivered by its duly authorised officer.

[Supplier name]

By: _____

Printed:

Title:

Date:

Supplier

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

SCHEDULE A: GLOSSARY

1. DEFINITIONS

1.1. Acceptance	<p>means, with respect to a NISD Solution, that SARS has notified Supplier in writing that SARS believes that the NISD Solution meets the Acceptance Criteria. SARS shall make its determination whether to grant Acceptance of or reject an NISD Solution in accordance with Clause 14 of the Terms and Conditions;</p> <p>“Accepted” when used in relation to SARS’s acceptance of the NISD Solution or components thereof will have the corresponding meaning.</p>
1.2. Acceptance Date	means the date on which SARS has Accepted an NISD Solution
1.3. Actual Performance	means, in respect of each Service Level, Supplier’s actual performance of the Deliverables against such Service Level.
1.4. Adjustment Date	has the meaning set out in Clause 10 of Schedule D (Pricing, Invoicing and Payments) .
1.5. Ad Hoc Travel Charge	has the meaning set out in Clause 6.1.3 of Schedule D (Pricing, Invoicing and Payments) .
1.6. Affiliate	<p>means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" will also include:</p> <p>(a) a subsidiary of such entity, as the term "subsidiary" is defined in section 3 of the Companies Act 71 of 2008, as amended; and</p> <p>(b) any foreign company which, if it were registered under such Act, would fall within the ambit of such term.</p>
1.7. After Hours	means all hours during a day other than Business Hours.

1.8. Agreement	means the Main Agreement together with all schedules, appendices, attachments and other documents attached thereto or referenced therein.
1.9. Agreement Interest Rate	means the bank lending rate set by the South African Reserve Bank from time to time.
1.10. Applicable Law	<p>means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and Subcontractors of a Party), or the Deliverables (including the performance, delivery, receipt or use of the Deliverables, as applicable and wherever occurring):</p> <ul style="list-style-type: none"> (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law); (b) South African common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; and (e) any applicable direction, policy or order that is given by a regulator (other than SARS's directions or policies given as a customer of the Deliverables).
1.11. At Risk Amount	has the meaning set out in Clause 1.2.2 of Schedule C (Service Levels) .
1.12. Audit Response Plan	has the meaning set out in Clause 23.2.2 of the Main Agreement .
1.13. Back-out Plan	bears the meaning assigned to it in Clause 13.3.4.1.2 of Schedule B (SOW) .
1.14. BBBEE	Broad-Based Black Economic Empowerment as defined more fully in Schedule I
1.15. Benchmarker	means an independent industry recognised benchmarking supplier designated by SARS and approved by Supplier (such approval not to be unreasonably withheld).

1.16. Bidder	means a prospective Supplier who submitted a Proposal in respect of the RFP
1.17. Bronze	means a Support Level with associated Service Level Targets as set out in Table 2: Support Levels of Appendix C-1 (Service Levels and Credits) .
1.18. Break-fix	means the restoration of broken or dysfunctional NISD Solutions as more fully described in Clause 6 of Schedule B (SOW) .
1.19. Bug	means any error, flaw or mistake in the program of a Deliverable's source code which in any way prevents the Deliverable from functioning correctly.
1.20. Business Continuity Plan	means the plan or plans which contain detailed and specific requirements with to be performed by the Supplier in the event of a disaster occurring.
1.21. Business Day	means any day between and including Monday and Friday except official public holidays in South Africa.
1.22. Business Hours	means 07h00 through 17h00 on a Business Day.
1.23. Change Order	means a change order substantially in the form and fulfilling the requirements of Appendix E-3 (Form of Change Order) that records the changes agreed between the Parties in respect of the Deliverables provided in accordance with the Agreement, schedules to the Agreement and/or under a Work Order executed during the Term. A Change Order will only be binding of the Parties once the Change Order has been signed by duly authorised representatives of both Parties.
1.24. Change	has the meaning set out in Clause 13.1.2 of Schedule B (SOW) .
1.25. Charges	means the amounts payable by SARS to Supplier under Schedule D (Pricing, Invoicing and Payments) together with its appendices, attachments and any other documents attached thereto or referenced therein.

1.26. Checklist	means the checklist found in Appendix B-9 (Maintenance Checklists) listing: (i) detailed inspection and maintenance activities to be performed by the Supplier; and (ii) the frequency of the performance of each activity in accordance with the Maintenance Type. Supplier shall, throughout the Term, evaluate and make recommendations to SARS on the activities and frequency of inspection and SARS and the Supplier may agree to vary the Checklists from time to time.
1.27. CIDB	means the Construction Industry Development Board.
1.28. Clause	The numbering of the paragraph of this Agreement
1.29. Commencement Date	Means, with reference to a Work Order or Change Order, the date on which Supplier is to commence the Deliverables in accordance with a Work Order or Change (including the Performance Standards).
1.30. Commercially Reasonable Efforts	means taking such steps and performing in such a manner as a well-managed entity would undertake where such entity was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party.
1.31. Confidential Information	<p>(a) means in relation to SARS, subject to Sub-Clause (c) immediately below in this definition, any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which:</p> <p>(i) in terms of applicable legislation or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by Supplier as confidential (including by reason of such information not being generally known to, or readily ascertainable by, Third Parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans</p>

	<p>of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to Supplier, as being confidential information; and (iv) and any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature;</p> <p>(ii) SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to Supplier (including Supplier Personnel, Supplier's Affiliates, Subcontractors, Third Party suppliers or agents, as applicable) or which Supplier (including Supplier Personnel, Supplier's Affiliates, Subcontractors, Third Party suppliers or agents, as applicable) otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of Deliverables under this Agreement, and which information will include this Agreement;</p> <p>(b) means in relation to Supplier, subject to Sub-Clause (c) immediately below in this definition, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Supplier, at the time of disclosure to SARS, as being Confidential Information, and which written designation is in each case acknowledged by SARS, by SARS initialling such designation;</p> <p>(c) does not include information that: (i) is lawfully publicly available to, or lawfully in the Receiving Party's</p>
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	<p>possession, at the time of disclosure thereof by the Furnishing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Furnishing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Furnishing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:</p> <p>(i) the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;</p> <p>(ii) the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;</p> <p>(iii) any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and</p> <p>(iv) the determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.</p>
<p>1.32. Configuration Management</p>	<p>means the ITIL discipline embodied by the Configuration Management Procedures and Configuration Management Deliverables.</p>
<p>1.33. Consulting Deliverables</p>	<p>has the meaning set out in Clause 16.1 of Schedule B (SOW).</p>
<p>1.34. Contact</p>	<p>has the meaning set out in Clause 9 of Schedule B (SOW).</p>

<p>1.35. Contract Year</p>	<p>means:</p> <p>(a) for the 1st (first) contract year, the period of time from the Commencement Date until 31 of January 2014; and</p> <p>(b) for each subsequent year of the Term, each successive 12 (twelve) month period ending on 31 January</p>
<p>1.36. Control</p>	<p>and its derivatives means, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:</p> <p>(a) holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;</p> <p>(b) controlling the majority of the voting rights in such entity; or</p> <p>(c) having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.</p>
<p>1.37. Cost Review Meeting</p>	<p>has the meaning set out in Clause 1.5 of Schedule D (Pricing, Invoicing and Payments).</p>
<p>1.38. Critical Deliverables</p>	<p>means those milestones, activities, actions and projects identified as such in this Agreement including, without limitation, in Appendix C-1 (Service Levels and Credits) to Schedule C (Service Levels).</p>
<p>1.39. Data Protection Legislation</p>	<p>Means collectively, POPIA and any other legislation applicable to the protection of Personal Information in the Republic of South Africa.</p>
<p>1.40. Data Subject</p>	<p>Means the person to whom Personal Information relates.</p>
<p>1.41. Deliverables</p>	<p>means the NISD Solutions, duties, services, activities, functions and responsibilities to be provided or to be performed by the Supplier for SARS in terms of this Agreement as more fully set out in Clause 4.1 of the Main</p>

	Agreement.
1.42. Developed Intellectual Property	has the meaning set out in Clause 12.2.1 of the Main Agreement .
1.43. Dependency	bears the meaning set out in Clause 9.1 of the Main Agreement . All Dependencies are set forth in Appendix B-5 (Dependencies) .
1.44. Diagnosis	has the meaning set out in Clause 3.2 of Schedule B (SOW) .
1.45. Disengagement Assistance	has the meaning set out in Clause 1.1 of the Schedule F (Disengagement Assistance) .
1.46. Disengagement Assistance Manager	has the meaning set out in Clause 1.8.1 of the Schedule F (Disengagement Assistance) .
1.47. Disengagement Assistance Period	means the period commencing 6 (six) months prior to expiration of this Agreement, or commencing on any notice of termination and continuing through the effective date of expiration (as it may be extended in terms of the Main Agreement) or, if applicable, through the effective date of termination (as such effective date may be extended in terms of the Agreement) and ending up to 12 (twelve) months after such date as is necessary to successfully complete Disengagement Assistance.
1.48. Disengagement Assistance Plan	means the disengagement assistance plan(s) to be developed in accordance with Schedule F (Disengagement Assistance) .
1.49. Effective Date	has the meaning set out in the preamble of the Main Agreement .
1.50. Event	means a discrete and separate activity that comprises any part of the Deliverables regardless of the duration and number of visits to a SARS Site.
1.51. Enhanced Maintenance	means a type of Scheduled Maintenance, performed at a SARS Site, in accordance with the Enhanced Maintenance Checklist found in Appendix B-9 (Maintenance Checklists) .

1.52. Error Control	has the meaning set out in Clause 12.4 of Schedule B (SOW) .
1.53. Essential Maintenance	means a type of Scheduled Maintenance, performed at a SARS Site, in accordance with the Essential Maintenance Checklist found in Appendix B-9 (Maintenance Checklists) .
1.54. Essential Terms	has the meaning set out in Clause 5.3 of the Main Agreement .
1.55. Extraordinary Event	has the meaning set out in Clause 11 of Schedule D (Pricing, Invoicing and Payments) .
1.56. Fiscal Year	means SARS's financial accounting year running from 01 April to 31 March.
1.57. Fixed Scanner	means a Scanner unit which is designed to remain in one physical location;
1.58. Force Majeure Event	has the meaning set out in Clause 22.3 of the Main Agreement .
1.59. Furnishing Party	means the Party who furnishes or otherwise makes available such Party's Confidential Information to the other Party (including such other Party's employees, Affiliates, Subcontractors, Third Party Suppliers and agents, as applicable) or on whose behalf such Party's Confidential Information is furnished or otherwise made available to the other Party (including such other Party's employees, Affiliates, Subcontractors, Third Party Suppliers and agents, as applicable).
1.60. High Energy In-line Scanner	X-Ray Cargo scanner to screen small and large road legal trucks in drive through portal configuration at speeds up to 10km/h and minimum 30 vehicles per hour with clear images and minimum 300mm penetration capability of solid steel
1.61. Hold	means a Support Level with associated Service Level Targets as set out in Table 2: Support Levels of Appendix C-1 (Service Levels and Credits) .

1.62. Governmental Entity	means any department, agency, service or other constituent body of the national South African government.
1.63. ICT	means information and communication technology.
1.64. Incident	means any event that is not part of the standard operation of a Service (including a fault with hardware or Software or a failure to successfully complete a batch job on time) and that causes, or may cause, an interruption to, or a reduction in, the quality of that Service.
1.65. Incident Management Deliverables	has the meaning set out in Clause 11 of Schedule B (SOW) .
1.66. Incident Management Procedures	has the meaning set out in Clause 11.1.1 of Schedule B (SOW) .
1.67. Inflation Sensitivity Factor	has the meaning set out in Appendix D-4 (Pricing Adjustments) .
1.68. Insolvency Event	Means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
1.69. Intellectual Property	means all computer programs, Software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video

	<p>recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing.</p>
<p>1.70. Intellectual Property Rights</p>	<p>means all rights of whatever nature and how described in respect of Intellectual Property, including:</p> <ul style="list-style-type: none"> (a) all patents and other patent rights, including divisional and continuation patents, utility models; (b) rights in and to inventions, whether patentable or not; (c) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (d) rights in designs, topography rights, rights in circuit layouts and mask-works; (e) copyright, including all copyright in and to computer programs; (f) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (g) rights in databases and data collections; and (h) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisional of, any of these and

	the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
1.71. ITIL	means the Information Technology Infrastructure Library published by the UK Office of Government Commerce (" OGC "), and any natural successor organisations to the OGC, from time to time, together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum (ITSMF) from time to time, including any natural successor organisations to the ITSMF.
1.72. Key Supplier Personnel	means the personnel approved by SARS to fill the Key Supplier Positions. The Key Supplier Positions and Supplier Personnel approved to fill such positions as of the Effective Date are set out in Appendix E-1 (Key Supplier Positions) .
1.73. Key Supplier Positions	has the meaning as set out in Clause 8.2 of the Main Agreement .
1.74. Known Error	means an identified Problem for which a temporary Workaround or permanent solution has been identified.
1.75. Losses	means all losses, liabilities and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, and judgment), fines, interest and penalties.
1.76. Low Energy scanners	Transmission scan enabled with transmission receiver included in the Request for Proposal (RFP 22-2023) with a 10 mm minimum steel penetration.
1.77. Main Agreement	means the terms and conditions of the Agreement excluding the Schedules, Appendices and Attachments.
1.78. Managed SARS Third Party	means a Third-Party Supplier as to whom Supplier is to oversee and manage such Third Party Supplier's performance and contract with SARS.

1.79. Managed SARS Third Party Contract	means a contract between SARS and a Managed SARS Third Party that Supplier is to oversee and manage. [Note to the Bidder: To be completed upon finalisation of Agreement if required.]
1.80. Maintenance	has the meaning set out in Clause 5 of Schedule B (SOW) .
1.81. Maintenance Type	means the classification of Scheduled Maintenance at a SARS Site in accordance with activities and frequencies in the Checklists, as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to Supplier. Maintenance Types are either Enhanced or Essential Maintenance and the Maintenance Type for each SARS Site, at the Commencement Date, is set out in Appendix B-3 (Site List) .
1.82. Maintenance Window	means the window of time for each SARS Site during which Maintenance must occur being either during Business Hours or After Hours as specified in Appendix B-3 (Site List) as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to Supplier.
1.83. NISD Solutions	means Non-Intrusive Inspection, Scanning and Detection Solutions and related options (High and Low Energy Inline Scanners)
1.84. NIPP	means the National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content that became effective on the 1 September 1996.
1.85. Non-Intrusive Inspection, Scanning and Detection Solutions Agreement	means this agreement, together with its Schedules, Appendices and Attachments
1.86. Notice of Election	has the meaning set out in Clause 21.3.1 of the Main Agreement .
1.87. OEM	Means original equipment manufacturer

1.88. OGC	has the meaning set out in the definition of ITIL in this Schedule A (Glossary) .
1.89. Operational Change Management Deliverables	has the meaning set out in Clause 13.1.1 of Schedule B (SOW) .
1.90. Operational Change Management Procedure	has the meaning set out in Clause 13.2 of Schedule B (SOW) .
1.91. Party or Parties	has the meaning set forth in the preamble to the Main Agreement .
1.92. Parts	means replacement components for NISD Solutions.
1.93. Pass Through Expense	means an expense charged by a Third-Party Supplier for goods or services which relates to the Deliverables, is purchased by Supplier on behalf of SARS, and SARS agrees to pay on a Pass Through Expense Basis.
1.94. Pass Through Expense Basis	means the actual and reasonable amount charged or invoiced by the applicable Third Party for Pass Through Expenses without the addition of, or separate charge for, any margin, mark-up, administrative or other similar fee.
1.95. Performance Bond	has the meaning given to it in Clause 27.16 of the Main Agreement .
1.96. Performance Standard	means a quantitative or qualitative level of service specified in this Agreement as to which Supplier's performance of the Deliverables must conform. Performance Standards include Service Levels.
1.97. Person	means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, company (whether incorporated or not), trust, organisation, business association, firm, joint venture, Governmental Entity or other governmental unit, agency or other body.
1.98. Personnel Rates	means the applicable Charges by skill set for Deliverables performed on a Time and Materials Basis as set out in Appendix D-3 (Personnel and Material Rates) to

	Schedule D (Pricing, Invoicing and Payments).
1.99. PIR	has the meaning set out in Clause 12.5 of Schedule B (SOW) .
1.100. PSIRA	Private Security Industry Regulatory Authority Act (Act no. 56 of 2001)
1.101. Preferred Supplier	means a Bidder within a Scanner Category who, following evaluation of RFP Proposals, has been appointed to Preferred status and who complies and remains in compliance with the rules and requirements to maintain Preferred Supplier status.
1.102. Preventative Maintenance	has the meaning set forth in Clause 5.2 of Schedule B (SOW) .
1.103. Problem	means the unknown underlying cause of one or more Incidents.
1.104. Problem Management Deliverables	has the meaning set out in Clause 12 of Schedule B (SOW) .
1.105. Problem Management Procedures	the meaning set out in Clause 12.1.1 of Schedule B (SOW) .
1.106. Problem Control	has the meaning set out in Clause 12.3 of Schedule B (SOW) .
1.107. Process and Procedures Library	means the comprehensive and detailed manual described in Clause 4.5 of Schedule E (Governance) , including processes and procedures applicable to the Deliverables.
1.108. Project	<p>means a set of tasks and other work relating to the Deliverables that is requested by SARS after the Effective Date and performed by the Supplier thereafter so long as:</p> <ul style="list-style-type: none"> (a) the work is discrete and non-recurring; (b) the work requires start-up, planning, execution and closure; (c) the completion of the work is likely to result in a change to the environment in which the Deliverables are provided; and

	<p>(d) the work is not required for Supplier to:</p> <ul style="list-style-type: none"> (i) meet the Performance Standards; (ii) implement changes to the environment required as a result of benchmarking under the Agreement; (iii) meet Supplier's currency (including refresh) obligations under the Agreement; or (iv) meet any other obligations of Supplier under this Agreement. <p>Projects must be contained in a Change Order/Work Order in accordance with Appendix E-3 (Form of a Change Order) and Appendix E-4 (Form of a Work Order).</p> <p>The Parties may agree to refer to other aggregations of work that do not meet the requirements of this definition of the term Projects as projects. In such case, such projects will be in scope and will not attract additional charges and will not necessarily be set out in a Work/Change Order.</p>
1.109. Project Management Deliverables	has the meaning set out in Clause 14 of Schedule B (SOW) .
1.110. Proposal	means the Supplier's response to the Request for Proposal 22-2023 as attached in Schedule H (Supplier Proposal) .
1.111. Receiving Party	means the Party receiving Confidential Information from the Furnishing Party.
1.112. Regional Main Centre	is a strategically centrally located town or city, as set out in Appendix D-6 (Regional Main Centres) as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to Supplier. For the purpose of travel calculations, a SARS Site located in the Regional Main Centre, or the town/city centre (if there is no SARS Site in the Regional Main Centre), will be used as the point from which the distances to other SARS Sites which have such town/city designated as their Regional Main Centre will be measured. Supplier(See Site Distance)
1.113. Remedy	is the BMC Incident, problem and change management product Remedy ITSM.

1.114. Reports	means the reports to be provided by Supplier in accordance with the Agreement.
1.115. Replacement Product	has the meaning set out in Clause 19.6.2
1.116. Replacement Warranty Period	has the meaning set out in Clause 19.6.2
1.117. Request for Change or RFC	has the meaning set out in Clause 13.3.1 of Schedule B (SOW) .
1.118. Request for Proposal or RFP	means SARS's Request for Proposal number 22/2023 for NISD Solutions.
1.119. Request for Quotation or RFQ	means SARS's Request For Quotation(s) which SARS will issue to the Preferred Supplier(s) during the Term of this Agreement, as described in Schedule M
1.120. Required Consent	means, with respect to Third Party Software or any other resource provided to SARS under contract, those consents and approvals necessary to effect Supplier's assumption of financial, administrative and operational responsibility, or Supplier's access and use thereof, as applicable.
1.121. Resolve	means to correct an Incident, Problem or Known Error so that the affected Service is recovered and restored (and in the case of Incidents, Problems or Known Errors affecting supported hardware or supported Software, the relevant supported hardware or supported Software is operating correctly), or a Workaround is otherwise successfully implemented, and that the end user or SARS support group has confirmed such resolution in accordance with the provisions of the Process and Procedures Library and the configuration management database has been appropriately updated to reflect the Incident and its Resolution. "Resolution" and "Resolved" will have corresponding meanings.
1.122. Resources	has the meaning set out in Clause 4.11.2 of the Main Agreement .
1.123. Restricted Solution	means those Solutions that SARS would ordinarily procure

	from a Supplier by following an RFQ process, but is restricted to procuring such Solutions, from a specific Preferred Supplier, to ensure Solution reliability, integrity, compatibility and supportability. See Clause 4.3.4
1.124. Retained Expenses	mean the costs, other than the Charges and Pass Through Expenses that SARS incurs in connection with the Deliverables (including its internal costs).
1.125. SARS	has the meaning set out in the preamble to the Main Agreement .
1.126. SARS Assets	has the meaning set out in Clause 7.4.1 of the Main Agreement .
1.127. SARS CAB	Means SARS's Change Advisory Board.
1.128. SARS Contract Executive	means the one individual designated by SARS to whom all Supplier communications concerning this Agreement will be addressed. SARS may change the SARS Contract Executive from time to time during the Term upon notice to Supplier.
1.129. SARS Disengagement Assistance Manager	has the meaning set out in Clause 1.8.2 of the Schedule F (Disengagement Assistance) .
1.130. SARS Oath of Secrecy / Solemn Declaration	means an oath / solemn declaration required to be signed by the Supplier Personnel.
1.131. SARS Personnel	means any employees, officers, contractors or consultants of SARS other than Supplier Personnel.
1.132. SARS PPS&G	means SARS's policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Deliverables or Supplier from time to time. The SARS PPS&G are specified in Appendix E-2 (SARS PPS&G) of Schedule E (Governance) .
1.133. SARS Service Desk	means the facilities, associated technologies and SARS Personnel who provide first level support.
1.134. SARS Site	means a campus, office or other physical location lease,

	owned or occupied by SARS.
1.135. SARS Software	<p>means:</p> <p>Software owned by SARS and modifications made thereto during the Term; and</p> <p>Software developed by or for, or acquired by, SARS during the Term and modifications thereto during the Term. SARS Software will include Software developed during the course of Suppliers performance of a Project or a New Service, to the extent such Software is developed by Supplier and SARS.</p>
1.136. Scheduled Maintenance	has the meaning set forth in Clause 5.3 of Schedule B (SOW) .
1.137. Service Coverage Period	has the meaning set out in Clause 3.2 of Appendix C-1 (Service Levels and Credits) .
1.138. Service Level	means the quantitative standards of performance of certain of the Deliverables that Supplier is required to satisfy under Schedule C (Service Levels) .
1.139. Service Level Credit	means an amount by which SARS is entitled to reduce the Charges payable by it as contemplated in Schedule C (Service Levels) and as determined in accordance with the provisions of Schedule C (Service Levels) and Appendix C-1 (Service Levels and Credits) .
1.140. Service Level Credit Percentage	has the meaning set out in Clause 2.4.1.2 of Schedule C (Service Levels) .
1.141. Service Level Credit Increment Percentage	has the meaning set out in Clause 2.4.1.2(b) of Schedule C (Service Levels) .
1.142. Service Level Failure	means in respect of a Service Level where Actual Performance fails to meet or exceed such Service Level in the relevant month.
1.143. Service Level Report	has the meaning set out in Clause 2.40 of Schedule C (Service Levels) .

1.144. Service Level Target	has the meaning given in Clause 2.4.1.2 of Schedule C (Service Levels) .
1.145. Services	means training services, Maintenance and support services, relocation services, and other services that may be ordered by SARS from time to time under a Work Order;
1.146. Supplier	has the meaning set out in the preamble to the Main Agreement .
1.147. Supplier Environment	means the hardware, Software, contracts, Intellectual Property, assets, facilities, and other resources owned, leased, licensed or otherwise controlled by Supplier (collectively, " Supplier Resources ") that, directly or indirectly, interface with, interconnect with, exchange data with or otherwise interact or interoperate with the relevant environment or the systems Supplier uses internally. Except as otherwise provided in this Agreement, the Supplier environment is out of the scope of the Deliverables.
1.148. Supplier Facilities	has the meaning set out in Clause 7.1 of the Main Agreement .
1.149. Supplier Personnel	means Supplier staff, be they permanent, temporary or contractors, and subcontractor's personnel delivering or performing Deliverables on behalf of the Supplier.
1.150. Supplier Policies	has the meaning set out in Clause 4.4.1.2 of Schedule E (Governance) .
1.151. Supplier Proposal	means the Supplier's formal response to the Request for Proposal 22-2023 as per Schedule H (Supplier Proposal) .
1.152. Supplier Service Delivery Manager	<p>means a person designated by the Supplier who will:</p> <ul style="list-style-type: none"> (a) serve as Supplier's single point of accountability for the Deliverables; and (b) have day-to-day authority for ensuring Supplier's fulfilment of its obligations under the Agreement and SARS's satisfaction with the Deliverables. <p>The Supplier Service Delivery Manager will be a senior</p>

	member of the Supplier Personnel who will have the authority to act on behalf of Supplier and its Subcontractors.
1.153. Supplier Site	means a physical location from which Supplier or a Subcontractor is performing any of the Deliverables, excluding any SARS Sites.
1.154. Silver	means a Support Level with associated Service Level Target as set out in Table 2: Support Levels of Appendix C-1 (Service Levels and Credits) .
1.155. Site Distance	means the distance (in kilometres) from a SARS Site to the nearest Regional Main Centre. The Site Distances are set out in Appendix B-3 (Site List) .
1.156. Software	means any elements of coding or computer programs (including related documentation and media), including as applicable the object code and/or source code and without limit to whether the software is operating system software, applications Software, Tools, firmware or otherwise.
1.157. SPOC	means a single point of contact designated by the Supplier.
1.158. SSA	means Statistics South Africa.
1.159. Standard Change	means a change to the NISD Solution that follows an established path, reoccurs, carries low risk and is the SARS's accepted solution to a specific requirement or set of requirements.
1.160. Statement of Work or SOW	means one, some or all of the Statements of Work set out in Schedule B (SOW) to the Agreement.
1.161. Steering Committee	has the meaning set out in Clause 4.1 of Schedule E (Governance) .
1.162. Subcontract	has the meaning set out in Clause 5.3 of the Main Agreement .
1.163. Subcontractor	means a Third Party (including a Supplier Affiliate) to whom Supplier subcontracts or otherwise delegates any Supplier obligations to perform any of the Deliverables (including subcontractors of a Subcontractor) provided that such Third

	Party has been approved for such purpose by SARS in accordance with the Main Agreement .
1.164. Successor	means SARS or any replacement supplier designated by SARS that replaces the Supplier as the supplier to SARS of the Deliverables or part of the Deliverables.
1.165. Support Levels	means a Service Level category for Break-fix defined by a particular Service Level Target the achievement of which is to be measured in terms of the Service Level metric of Time to Respond and Time to Resolve. Support Levels must occur either during Business Hours or After Hours as specified in Appendix B-3 (Site List) as such is varied at SARS' sole discretion upon no less than 30 (thirty) days prior written notice to Supplier.
1.166. Term	means the duration of this Agreement as more fully set out in Clause 3
1.167. Terminated Deliverables	means the Deliverables or part of the Deliverables that are no longer to be performed by Supplier and instead are to be performed by a Successor at the end of the Term, including where such Deliverables are replaced by alternative Deliverables or New Deliverables.
1.168. Termination Date	means the effective date of termination or expiration pursuant to Clause 26 of the Main Agreement as it may be extended by SARS pursuant to Clauses 3.2 and 26.5 of the Main Agreement .
1.169. Third Party	means a Person other than SARS, a Governmental Entity, Supplier or its Affiliates.
1.170. Third Party Contract	means any agreements entered into by SARS or a Supplier with Third Parties pursuant to which the Third Party provides services to SARS or the Supplier in support of supplying NISD Solutions to SARS.
1.171. Third Party Intellectual Property	means all Intellectual Property that is owned or controlled by a Third Party and: <ul style="list-style-type: none"> (a) used by Supplier to perform the Deliverables; or (b) incorporated or embedded in any Deliverable or any

	Intellectual Property forming part of or related to any Deliverable, including all Third Party Software.
1.172. Third Party Resources	has the meaning set out in Clause 4.11.2 of the Main Agreement .
1.173. Third Party Software	means any computer programs, Software, source code, object code, programmer interfaces, specifications and/or operating instructions owned or controlled by a Third Party and: (a) used by Supplier to perform the Deliverables; and/or (b) incorporated or embedded in any Deliverable or any Intellectual Property forming party of or related to any Deliverable.
1.174. Third Party Supplier	means a Third Party that is a licensor of Software, lessor of equipment, or supplier of other goods or services to SARS (or to a Governmental Entity that is receiving Deliverables under this Agreement) from time to time, including such Third Party's employees, agents, Affiliates, Subcontractors and Third Party suppliers. Third Party Suppliers exclude any Affiliate, Subcontractor (direct or indirect), or other agents of Supplier to the extent involved in performing or delivering the Deliverables under contract (direct or indirect) with Supplier.
1.175. Time and Materials Basis	means compensation to Supplier, where and to the extent additional work is expressly authorised to be paid in this manner under this Agreement, as follows: (a) at the Personnel Rates for the actual time expended on such work; and (b) on a Pass Through Expenses Basis for material or incidental costs incurred in performing such work.
1.176. Tool	means any Software tool or process used to deliver the Deliverables.
1.177. Unit Rates	means the price for each unit of product as defined in the specifications set out in Schedule D (Pricing, Invoicing and Payments) and its appendices and attachments.
1.178. ULD	means a Unit Load Device which is a pallet or container used

	to load luggage or cargo on a wide-body or specific narrow-body aircraft.
1.179. VAT	means value-added tax as levied from time to time in terms of the Value-Added Tax Act 89 of 1991.
1.180. Virus	<p>means any computer code, device, procedures, routines, mechanisms, method or means, including any virus, Trojan horse, worm, lock-up, time bomb, logic bomb or disabling code, that:</p> <p>(a) causes the unplanned interruption, disruption, distortion (including aesthetic disruptions or distortions) of the Deliverables or accessibility to, use or operation of any:</p> <p>(i) Deliverables;</p> <p>(ii) item of Intellectual Property forming part of or related to any Deliverable;</p> <p>(iii) item of Intellectual Property arising out of or pursuant to the rendering of any Deliverables under this Agreement; or</p> <p>(iv) systems, networks, Software or computer hardware of Supplier or SARS or SARS data contained therein (Sub-Clauses (a)(i) to (a)(iv) inclusive hereinafter for the purposes of this “Virus” definition collectively referred to as the “Components”), or is designed to interrupt, disrupt, distort (including aesthetically disrupt or distort) the aforementioned;</p> <p>(b) alters, disables, causes to cease functioning, harms, destroys, impedes or inhibits the use or operation of any of the Components or is designed to alter, disable, cause to cease functioning, harm, impede or inhibit (including aesthetically alter, harm, impede or inhibit) the aforementioned);</p> <p>(c) otherwise blocks authorised access to any of the Components or is designed to block access to the aforementioned;</p> <p>(d) interferes with, or is designed to interfere with, the delivery of the Deliverables to SARS;</p>

	<p>(e) would permit any party access to any of the Components to cause any of the effects described above (inclusive); or</p> <p>(f) can cause damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations thereof.</p>
1.181. Warranty Period	has the meaning set out in Clause 19.6 of the Main Agreement;
1.182. Workaround	means in respect of an Incident or Problem that the Incident or Problem is avoided either by implementing a temporary fix or by using a technique that means that SARS are not reliant on the particular aspect of the Service (or the relevant hardware, Software or part thereof) that is affected by the Incident or Problem.
1.183. Work Order	means a work order substantially in the form and fulfilling the requirements of Appendix E-4 (Form of a Work Order) and describing at least: (i) the details of the Deliverables to be performed under this Agreement; (ii) the amount, schedule and method of payment (subject to the provisions of Pricing, Schedule D (Pricing, Invoicing and Payments)); (iii) start and end date or where applicable to the timeframes for performance; (iv) where applicable the completion and acceptance criteria; and (v) any applicable Service Levels and Service Level Credits, etc. A Work Order will only be binding of the Parties once the Work Order has been signed by duly authorised representatives of both Parties.
1.184. 24x7x365	means at all times.

2. INTERPRETATION

2.1. Construction

In this Agreement, a reference to:

2.1.1. a statutory provision, includes a reference to:

2.1.1.1. the statutory provision as modified or re-enacted from time to

- time (whether before or after the Effective Date); and
- 2.1.1.2. any subordinate legislation made under the statutory provision (whether before or after the Effective Date);
- 2.1.2. persons or entities, includes a reference to natural persons, any body corporate, association, trust, partnership or other entity or organization;
- 2.1.3. a person or entity, includes a reference to that persons or entity's successors or assigns;
- 2.1.4. a schedule, appendix or attachment unless the context otherwise requires, is a reference to a schedule, appendix or attachment to this Agreement; and
- 2.1.5. the singular includes the plural and vice versa, unless the context otherwise requires.
- 2.2. **Other**
- 2.2.1. Wherever a term is defined in this Agreement anywhere outside of this **Schedule A (Glossary)**, such term will bear the meaning so assigned to it throughout this Agreement wherever it appears in the title case.
- 2.2.2. Technical terms that are not contained in the definitions set out above has their generally understood meaning in the telecommunications and information technology industries and, if used in ITIL, then in ITIL.
- 2.2.3. The headings in this Agreement will not affect the interpretation of this Agreement.
- 2.2.4. This Agreement will not be construed against either Party as a result of that Party having drafted or proposed the relevant clause.
- 2.2.5. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 2.2.6. Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this Agreement, then:
- 2.2.6.1. the determination of the expert will (in the absence of manifest error) be final and binding;
- 2.2.6.2. subject to any express provision to the contrary, the expert will

determine the liability for his or her charges, which will be paid accordingly;

- 2.2.6.3. the expert will be entitled to determine such methods and processes as he or she may, at his or her sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 2.2.6.4. the expert will consult with the relevant Parties (provided that the extent of the expert's consultation will be at his or her sole discretion) prior to rendering a determination; and
- 2.2.6.5. having regard to the sensitivity of any confidential information, the expert will be entitled to take advice from any person considered by him or her to have expert knowledge with reference to the matter in question.
- 2.2.6.6. Notwithstanding the above SARS, in its sole election, will be entitled to bring any matter under consideration by an expert before the North Gauteng High Court, Pretoria and the Supplier hereby submits to the jurisdiction of that court.

SCHEDULE B: NISD SOLUTIONS SOW

Appendices and Attachments

Appendix B-1	Dependencies
Appendix B-2	Site List
Appendix B-3	Reports
Appendix B-4	Escalation Procedures

DRAFT

SCHEDULE B

NISD Solutions

Statement of Work

(Applicable to all Scanner Categories)

[Note to Bidder: This Schedule B sets out the general statement of work requirements and obligations applicable to all Scanner Categories (High and Low Energy.)]

3. SCOPE OF DELIVERABLES

3.1. Introduction

3.1.1. Supplier will provide the Deliverables and any other obligations of the Supplier under this Agreement relating to the Deliverables (e.g. Service Level reporting) save only those services, activities, functions, and responsibilities set out in **Appendix B-1 (Dependencies)**.

[Note to the Bidder: As part of your Proposal, you must identify any Dependencies by completion of Appendix B-1 (Dependencies)]

Supplier will provide Deliverables, including NISD Solutions at the SARS Sites, as these may be specified in Work Orders and Change Orders in accordance with this Agreement.

3.1.2. Supplier shall perform the Deliverables in accordance with the Performance Standards.

3.1.3. Unless otherwise indicated, the obligations contained in this Schedule B are applicable to all Scanner Categories (High and Low Energy) NISD Solutions. Any service exemptions or other service provisions which specifically affect an NISD Solution which falls within the scope of a particular Scanner Category are contained in the relevant Schedule B-c, where c is the Scanner Category number.

3.2. Overview of the Deliverables

3.2.1. Without limiting the generality of **Clause 3.1**, the Deliverables generally include the following main activities:

- 3.2.1.1. Implementation of NISD Solutions including: Site inspection; design and plan; delivery; execution; commission; test and signoff;
- 3.2.1.2. regular and scheduled inspections and maintenance of NISD Solutions;
- 3.2.1.3. break-fix activities, in relation to NISD Solutions, necessary to restore the functioning thereof after the occurrence of an Incident or to rectify a Problem;
- 3.2.1.4. SPOC, Asset, Incident, Problem and operational Change management activities relating to NISD Solutions;
- 3.2.1.5. the provision, delivery, installation, moving, adding to, changing and disposal (IMACD) of NISD Solutions on request by SARS and in accordance with 15 of the **Schedule B**;
- 3.2.1.6. adherence to the SARS PPS&G for the management of assets;
- 3.2.1.7. account management activities, including reporting to a SARS representative;
- 3.2.1.8. the provision of certain Deliverables in accordance with project management principles; and
- 3.2.1.9. other services related to infrastructure provisioning, system enhancement, customisation, development, integration, consulting, training, management and operational reporting
- 3.2.2. Without limiting Supplier's obligations under this **Schedule B (SOW)**, certain responsibilities are included within the scope of the Services although not specifically addressed in this **Schedule B (SOW)**. These responsibilities include but are not limited to performing all activities :
 - 3.2.2.1. in compliance with good engineering practices;
 - 3.2.2.2. in compliance with SARS PPS&G;
 - 3.2.2.3. in compliance with security and access policies and procedures:
 - 3.2.2.3.1. contained in SARS PPS&G; and
 - 3.2.2.3.2. of other organisations, where specified in the RFQ;
 - 3.2.2.4. with prompt, efficient and courteous co-ordination and co-

operation with SARS, including the use of good customer service techniques;

- 3.2.2.5. in compliance with asset management as set out in Clause 5 below;
- 3.2.2.6. keeping all Deliverables under this Agreement current with industry advances and leading technology standards, by ensuring that all technology used by the Supplier to provide the Deliverables is maintained and is kept up to date as new technology is introduced into the market, so as to keep the Deliverables competitive with the similar deliverables offered by well-managed and adequately-funded organisations throughout the Term;
- 3.2.2.7. ensuring that the Supplier Personnel performing Deliverables have and maintain the appropriate accreditation to perform the functions assigned to them, including any granted by the applicable OEM(s) of the relevant NISD Solutions Supplier. Without limiting the generality of the foregoing, Supplier shall maintain compliance with the requirements set out in the applicable Work Order or Change Order; and
- 3.2.2.8. without limiting the generality of the preceding two paragraphs, Supplier shall render the Deliverables in all respects so as not to void or reduce any applicable warranty coverage for the NISD Solutions. In furtherance of this, Supplier shall have only Supplier Personnel who have the required certifications perform activities as to which the absence of such certifications would void or reduce warranty coverage, and will only purchase Parts that are authorised by the applicable OEM (including, if required, only purchasing Parts from the applicable OEM or a distributor or other supplier authorised by the applicable OEM).

3.3. Escalation Procedures

Any operational-level communications relating to the Services or this **Schedule B (SOW)** will be escalated in accordance with the escalation procedures set out in **Appendix B-4 (Escalation Procedures)**.

3.4. **Use of Subcontractors**

The Supplier's use of Subcontractors to perform any aspect of the Services will be subject to the provisions of **Clause 5** of the **Main Agreement**.

3.5. **Reports**

Supplier's responsibilities in regard to preparing and delivering reports to SARS in connection with the Services are set out in **Appendix B-3 (Reports)**.

4. **IMPLEMENTATION SERVICES**

4.1. **General**

If SARS orders a NISD Solution, the Supplier must deliver, install, test and elevate the NISD Solution in accordance with this Clause 4 and in terms of specific conditions and specifications contained in the Work Order or Change Order in respect of which the implementation services have been ordered.

4.2. **Dependencies**

SARS shall:

- 4.2.1. facilitate communications between Supplier and the owner or other person responsible for the site concerned to the extent reasonably required to facilitate the Supplier's delivery, installation and commissioning of the NISD Solution; and
- 4.2.2. ensure that the Minimum Site Conditions are complied with and procure the Improvements to the site in compliance with the Minimum Site Conditions, and make the site available to the Supplier for installation of the NISD Solution by the dates set down in the Project Plan.

4.3. **Installation, testing and elevating into production**

Supplier shall install, test and elevate into production the NISD Solution in accordance with the Agreement, including this Product and Service Order and otherwise in accordance with the Project Plan. Supplier's general obligations in this regard include:

- 4.3.1. attending any meetings reasonably requested by SARS;
- 4.3.2. shipping and delivering to the Site the NISD Solution ordered by SARS

- 4.3.3. assembling and installing the NISD Solution Improved Site;
- 4.3.4. installing any improvements to the site required to install the NISD Solution and make it operational, other than the Improvements specifically assigned to SARS under the Work Order / Change Order;
- 4.3.5. preparing the NISD Solution for operations in accordance with the Documentation (e.g., performance tuning);
- 4.3.6. testing the NISD Solution in accordance with the Testing Plan;
- 4.3.7. elevating the NISD Solution options into production on the date reasonably specified by SARS;
- 4.3.8. promptly correcting any Incidents with respect to the NISD Solution that arise prior to Acceptance by SARS of such NISD Solution and otherwise performing the functions described in Section 3 of Appendix B-1-3 (Form of Maintenance and Support Services SOW) during the period prior to Acceptance.
- 4.3.9. Supplier shall develop for SARS's review and approval a plan that addresses Supplier's obligation to deliver, install, test and elevate into production a NISD Solution ordered by SARS and all Documentation for such NISD Solution (the 'Project Plan'). Supplier shall develop a Project Plan that meets the requirements of Clause 4.4. for SARS' review and approval. Until SARS has accepted the NISD Solution ordered under a Work Order or Change Order, Supplier shall proactively identify risks to the timely and successful completion of the work required under such Project Plan.
- 4.3.10. Supplier shall deliver the Project Plan to SARS for its review and approval within 15 (fifteen) days after the Commencement Date in the case of a Work Order for a NISD Solution, or within 5 (five) days after the Commencement Date in the case of a Change Order with respect to a NISD Solution that has been installed at a SARS site. Within 15 (fifteen) days after the Commencement Date of a Work Order or Change Order, Supplier shall develop for SARS's review and approval an escalation procedure for addressing risks and issues associated with, or potentially arising from, the installation, testing, and elevation into production of the NISD Solution. Supplier shall incorporate any of SARS's reasonable comments into the Project Plan within 10 (ten) days after receipt of such

comments.

4.4. **Implementation Project Plan**

The Project Plan shall:

- 4.4.1. set out a brief summary of the work the Supplier will perform;
- 4.4.2. set out a brief summary of the principles Supplier will implement to ensure that such work is coordinated with SARS's other deployment activities for the applicable;
- 4.4.3. describe all of the tasks that Supplier must undertake to perform the implementation functions required of Supplier at the location designated by SARS in the Work Order or Change Order in a timely and successful fashion;
- 4.4.4. identify the dates on which SARS is to perform the Dependencies set forth in Attachment B-1-2 (Form of Requirements for Installing, Testing and Elevating into Production Scanners and Related Options);
- 4.4.5. set forth the sequence in which each task (whether to be performed by Supplier or SARS) is to be undertaken;
- 4.4.6. set forth the date by which the Supplier is obligated to complete each such task;
- 4.4.7. identify any risks to the timely completion of the work described in the Project Plan that can reasonably be identified; and
- 4.4.8. include a staffing plan for the Supplier Personnel who will be managing and performing the tasks to be performed under the Project Plan.

4.5. **Site Preparation**

- 4.5.1. If a Work Order or Change Order includes Site preparation in the scope of the order the Supplier shall accept responsibility and liability for the planning and execution of site preparation. Within 10 (ten) days of the Commencement Date of the Work Order or Change Order the Supplier must propose written designs and details regarding the Site preparation and necessary improvements to SARS for its review and approval.
- 4.5.2. Notwithstanding the exclusion of Site preparation from the scope of work specified in the Work Order or Change Order, the Supplier shall provide SARS such reasonable assistance as SARS may reasonably request in

preparing the Site for installation of a NISD Solution. Supplier shall in this regard, without accepting responsibility or liability for the planning and execution of site preparation, provide reasonable assistance and advice including:

- 4.5.2.1. Providing SARS with information regarding any required special infrastructure or civil engineering work to be performed by Supplier in the course of installing the NISD Solution;
- 4.5.2.2. For each NISD Solution, providing SARS a minimum site requirements specification including requirements and specifications for surface preparation, utility supplies, facilities and other matters relating to the provision and preparation of a site for the installation, testing and elevation into production of the NISD Solution;
- 4.5.2.3. Reviewing any site identified by SARS, providing advice with respect to the site and providing the recommended specifications for the improvements thereto that SARS is to implement as required to meet the minimum site requirements at the site necessary for the safe operation of the NISD Solution;
- 4.5.2.4. Providing advice and guidance with regard to the site, which shall include suggestions regarding, and review of preliminary designs for the improvement of the site and use and operation of the NISD Solution;
- 4.5.2.5. Following Supplier's review of SARS' written designs and details regarding the Site and improvements, certifying that the Site complies with the Minimum Site Conditions, and shall be suitable for the installation, commissioning and operation of the NISD Solution, such certificate being subject to the completion of the improvements that are the responsibility of SARS ('Improvements'); and
- 4.5.2.6. Following the completion of the Improvements by SARS, confirming that in Supplier's opinion SARS has completed the Improvements and the Site is suitable for installation and operation of the Scanner.

4.6. Testing

- 4.6.1. Supplier will develop testing protocols, procedures, test scripts and test cases, including the test data to be used and the expected results for testing the NISD Solution ordered by SARS (a 'Test Plan') that meets the requirements of Clause 4.6.2. Supplier shall deliver the Test Plan to SARS for its review and approval within 25 (twenty-five) days after the Commencement Date of the applicable Work Order or Change Order.
- 4.6.2. Supplier will propose a Test Plan that at a minimum provides for testing by Supplier that is sufficient to:
 - 4.6.2.1. establish that such NISD Solution conforms to the Documentation for the NISD Solution and the Product and Service Order; and
 - 4.6.2.2. discover any defects or deficiencies that can reasonably be discovered with respect to the NISD Solution as installed at SARS. Supplier shall perform such testing so that such defects or deficiencies are discovered as early as possible. Development and maintenance of Documentation is addressed in Clause 19.11 of the Main Agreement. The Test Plan shall require unit/string tests, integrated system tests, and stress and load tests, or equivalents thereof and require that Supplier perform such testing prior to shipment to, and after, installation at the applicable SARS site.
- 4.6.3. Supplier shall incorporate any of SARS's reasonable comments into the Test Plan within 10 (ten) days after receipt of such comments.
- 4.6.4. Supplier shall test each NISD Solution in accordance with the Test Plan. Supplier shall also test each related option that is to be installed as part of NISD Solution after the NISD Solution has been installed in accordance with the Test Plan. Supplier's obligations with respect to such testing shall include:
 - 4.6.4.1. documenting the tests and the results thereof;
 - 4.6.4.2. promptly correcting any material defects or deficiencies that are identified and re-testing until no material defects or deficiencies are found;
 - 4.6.4.3. conducting walk-throughs of test results with SARS and

permitting representatives of SARS to observe or participate in any tests; and

- 4.6.4.4. upon successfully completing the tests, certifying the results of the tests and notifying SARS that in Supplier's view the NISD Solution is ready for SARS's acceptance testing.

There shall be no adjustment to the dates on which Supplier is to perform tasks required under the Project Plan for any delays attributable to work required to correct defects or deficiencies discovered during testing.

- 4.6.5. With respect to Acceptance, within 25 (twenty five) days after the Order Effective Date for a Product and Service Order for a NISD Solution, Supplier shall propose for SARS's review and approval reasonable and appropriate criteria to be used by SARS to determine whether to Accept or reject a NISD Solution ordered under such Product and Service Order (the 'Acceptance Criteria') and reasonable and appropriate testing protocols, procedures, test scripts and test cases (including the test data and expected results) for SARS to test the NISD Solution t orders to determine whether the Acceptance Criteria have been satisfied (the 'Acceptance Test Plan'). Supplier shall incorporate any of SARS's reasonable comments into the Project Plan within 10 (ten) days after receipt of such comments. Without limiting the generality of the foregoing, the Acceptance Test Plan must in all cases provide for testing that is sufficient to discover any defects, deficiencies or other failures to comply with the Acceptance Criteria that can reasonably be discovered. Supplier shall incorporate any of SARS's reasonable comments into the Project Plan within 10 (ten) days after receipt of such comments.

- 4.6.6. Without limiting the generality of the foregoing, the Acceptance Criteria shall, among other things, require that the NISD Solution operates in SARS's production environment for a period of at least 30 (thirty) continuous days in accordance with its Documentation and the Product and Service Order, without an outage (other than an outage attributable solely to user error) and without exhibiting a material defect or deficiency. For purposes of clarity, installation, testing and elevation into production shall not be deemed to be acceptance. Moreover, without limiting the generality of the foregoing, the Acceptance Test Plan must in all cases provide for testing that is sufficient to discover any failures to comply with the

Acceptance Criteria and any other defects and deficiencies that can reasonably be discovered.

4.6.7. If a NISD Solution fails to meet one or more of the Acceptance Criteria within 45 (forty five) days of installation, testing and elevation to production, SARS (in its sole discretion) may by means of a reasonably detailed notice:

4.6.7.1. require that Supplier de-install the NISD Solution, remove the NISD Solution from SARS's premises, and refund (i) the Total Purchase Price, (ii) the price for any related options not included in the Total Purchase Price, and any prices for Services to be provided under the applicable Product and Service Order. Supplier shall cooperate with any Third Party suppliers of SARS, if applicable, and SARS in the removal of the defective NISD Solution

4.6.7.2. extend the 45 (forty-five) day period for Acceptance and require that Supplier:

4.6.7.2.1. replace the NISD Solution, and/or one or more of the components of the NISD Solution that are causing the failure to meet the Acceptance Criteria;

4.6.7.2.2. test the replacement NISD Solution ordered by SARS in accordance with the Test Plan; and

4.6.7.2.3. certify that the replacement NISD Solution is ready for Acceptance; or

4.6.7.3. accept the NISD Solution with any defects and deficiencies, in which case Supplier shall reduce the price for such NISD Solution to reflect the reduction in value to SARS arising from such defects or deficiencies.

4.6.8. SARS shall be deemed to have accepted a NISD Solution if SARS has used such NISD Solution, as the case may be, in production for at least 30 (thirty) continuous days without discovering a material defect or deficiency.

4.6.9. Nothing in this Clause 4.6.7 shall limit Supplier's obligation to respond to and resolve all Incidents in accordance with the Service Levels (Schedule C), or comply with its obligations under Clause 4.2. and elsewhere under this MSA.

5. MAINTENANCE SERVICES

5.1. General Obligations

Without limiting Supplier's obligations under this Agreement, Supplier will at all times:

- 5.1.1. maintain all NISD Solutions at SARS Sites by keeping all NISD Solutions in conformance with, or restored to the manufacturer's specifications.
- 5.1.2. adhere to the support standards and technical accreditations of the OEM;
- 5.1.3. adhere to the Performance Standards; and
- 5.1.4. include all activities necessary to perform Supplier's Maintenance obligations in terms of this Clause 5 to meet the: SPOC; Asset management incident management; problem management and change management obligations specified in Clauses 9; 10; 11; 12; and 13 of this **Schedule B (SOW)**.

5.2. Preventative Maintenance

Without limiting the generality of the foregoing, Supplier shall provide preventive maintenance, on an on-going basis to minimise disruption to SARS's business, the Services and the end users, in accordance with the relevant manufacturer's instructions or as otherwise mutually agreed ("**Preventative Maintenance**"). Supplier's Preventative Maintenance obligations shall include:

- 5.2.1. performing Maintenance in accordance with Clause 5.3 below and OEM instructions;
- 5.2.2. on-site inspections, including predictive fault investigation testing and diagnosis as well as replacement and repair services;
- 5.2.3. implementing corrections and solutions in relation to the activities set out in the previous paragraph so that the NISD Solutions shall on an on-going basis:
 - 5.2.3.1. operate in accordance with the manufacturer's specifications; and
 - 5.2.3.2. perform in accordance with this Agreement;
- 5.2.4. at SARS's request and in accordance with should Supplier be unable to procure Parts for existing NSID Solutions or where a component is going

out of manufacturer support, recommend to SARS that such NISD Solution is replaced or upgraded before the support period has expired in accordance with the Operational Change Management Procedure;

- 5.2.5. maintaining and updating maintenance and repair records relating to the NISD Solutions, conducting trend analysis and predictive Incident and Problem management and provide a bi-annual report in this regard;
- 5.2.6. recommending and, if directed by SARS, implementing methods of minimising the downtime caused by Maintenance and Break-fix and alternative or new NISD Solutions to achieve this goal;
- 5.2.7. complying with relevant maintenance recommendations, specifications or suggestions published from time to time by the manufacturer of the NISD Solutions in accordance with the timelines set forth in such recommendations, specifications or suggestions; and
- 5.2.8. where available, subscribing to user/developer/engineering information services that are made available by the manufacturer of the NISD Solutions.

5.3. **Scheduled Maintenance**

In addition to the above, Supplier shall perform inspection and Maintenance activities in accordance with any specific checklists contained in an agreed Work Order or Change Order.

6. **BREAK-FIX**

6.1. **General**

Without limiting Supplier's obligations under this Agreement, Supplier will at all times:

- 6.1.1. adhere to the support standards and technical accreditations of the OEM;
- 6.1.2. adhere to the Performance Standards; and
- 6.1.3. include all activities necessary to perform Supplier's Break-fix obligations in terms of this Clause 6 to meet the: SPOC; Asset management incident management; problem management and change management obligations specified in Clauses 9; 10; 11; 12; and 13 of this **Schedule B (SOW)**.

6.2. **Diagnosis**

Supplier shall, as part of the Break-fix, diagnose the Problems underlying Incidents affecting NISD Solutions, including by means of consulting applicable documentation and expertise and performing diagnostic testing (“**Diagnosis**”).

6.3. **Repair**

6.3.1. Supplier shall, as part of the Break-fix, attempt to repair NISD Solution that is malfunctioning. In the first instance, Supplier shall attempt to perform such repair at the SARS Site where such NISD Solution resides (collectively, “**On-site Repair**”). Supplier may perform such repair by identifying a malfunctioning component NISD Solution and replacing such components with a Part, provided that the requirements of **Clause 7** of this **Schedule B (SOW)** are satisfied. In such event, title to the Part will transfer to SARS in accordance with **Clause 7.3** of this **Schedule B (SOW)**.

6.3.2. In the event that Supplier is unable to successfully repair a component of NISD Solutions by means of On-site Repair, Supplier will upon giving SARS prior written notice, remove the malfunctioning component from SARS’s premises and identifying and applying (in accordance with the Operational Change Management Procedure) any temporary Workarounds or permanent correction.

6.4. **Install**

After repairing a NISD Solution or causing such NISD Solution to be repaired, as well as after replacing such NISD Solution with a new NISD Solution, Supplier shall install such repaired or new NISD Solution in accordance with the OEM instructions and Clause 13 of this **Schedule B (SOW)**.

7. **PARTS AND CONSUMABLES**

7.1. As part of the Maintenance and Break-fix, Supplier shall at its expense, obtain, maintain, and manage pools of Parts and consumables in amounts and locations determined in Supplier’s sole discretion to be necessary in order to render Maintenance and Break-fix in accordance with the applicable Performance Standards.

- 7.2. Supplier shall use Parts and consumables that were manufactured by the same manufacturer as the original part (except where, and to the extent, otherwise agreed in writing by SARS in its sole discretion) and that comply with SARS's PPS&G. Parts used by a Supplier must be new. After the expiry of an NISD Solution's warranty period and with SARS's express agreement in writing, Supplier may use, in Supplier's reasonable discretion, remanufactured or refurbished Parts, provided however, that Supplier's determination in this regard will not relieve Supplier of its obligation to render the Services in accordance with the applicable Performance Standards and Supplier shall not act in a way that voids the warranty and provided further that Supplier will provide a monthly report in this regard.
- 7.3. Upon a Part being installed in accordance with Clauses 7.1 and 7.2 above, all rights, title, and interest in such Parts shall transfer to SARS without any further action required on the part of either Party, and free of any liens or other encumbrances.
- 7.4. Any Parts installed by Supplier must not void the OEM's warranty and must be configured for the particular component of NISD Solution that they are being used to repair. Should Supplier void such warranty, Supplier shall, for the remainder of the warranty period so voided, perform in accordance with the warranty in the OEM's stead.
- 7.5. Providing secure storage for Parts and consumables shall be the sole and exclusive responsibility of Supplier.
- 7.6. On termination of the Agreement, SARS will not be obliged to purchase any Parts or consumables held by Supplier. Should SARS however exercise the option to purchase Parts or consumables, Supplier shall charge therefore in accordance with **Clause 8 of Schedule D (Pricing, Invoicing and Payments)**.

8. CONSIDERATIONS FOR RELOCATABLE NISD SOLUTIONS

8.1. Maintenance and Break-fix.

- 8.1.1. Supplier will verify the location of relocatable; vehicle- and trailer-mounted NISD Solutions with SARS prior to undertaking any maintenance tasks.
- 8.1.2. On SARS reporting an Incident or Problem with Supplier, the Supplier will establish:
- 8.1.2.1. Whether the Incident or Problem relates to a relocatable; vehicle- and trailer-mounted NISD Solution; and

8.1.2.2. if so, the Supplier will establish the location of such NISD Solution before responding . The Supplier will be responsible for any costs materialising from the failure to establish the location of a relocatable; vehicle- and trailer-mounted NISD Solution.

8.2. **Travel**

8.2.1. The travel charges of a relocatable NISD Solution must not be included in the monthly charge, but charged on a Time and Materials basis to the location actual location of the relocatable NISD Solution.

9. **SINGLE POINT OF CONTACT**

Supplier will provide a SPOC for all contacts ("**Contacts**") between the Parties relating to incidents, problems, performance, receipt and use of the Services as described in this Clause 9. The SPOC will provide primary support for resolution of Incidents, Problems or requests relating to the Services and will provide a seamless interface for other communications or activities relating to the Deliverables.

9.1. **Contacts**

9.1.1. Supplier will keep a detailed record of all Contacts. Contacts may relate to known or suspected Incidents or Problems, requests for Changes or Deliverables, or questions relating to the use of the Deliverables.

9.1.2. Supplier will maintain and update the SARS incident management system with updates to Contacts and upon completion of the activities required or as requested by SARS. SARS will be responsible for providing web based access to the SARS incident management system. The Supplier will be responsible for managing and providing the end-user structures, devices and network connections necessary to operate and connect to the incident management web based access provided by SARS.

9.1.3. Supplier will report to SARS monthly on the number and disposition of Contacts received. Contacts will be categorised as follows: (i) Incidents or Problems relating to the Deliverables; (ii) questions relating to the Deliverables; (iii) requests for Changes; (iv) other issues or questions relating to the Deliverables; or (v) issues or questions that do not relate to the Deliverables.

9.1.4. With respect to telephonic Contacts, the SPOC will as far as reasonably possible immediately resolve such Contacts without transferring or escalating the Contact.

9.2. **Resources**

Supplier will ensure that Supplier Personnel providing SPOC functions will be trained in, or will otherwise be made knowledgeable about, the Deliverables, the environments and SARS. Supplier will provide sufficient numbers of Supplier Personnel with the requisite training to be able to address SARS's specific issues and questions.

9.3. **Hours of Deliverable**

Supplier will provide contact information so that the Supplier Personnel providing SPOC functions can be accessed as appropriate on a 24x7x365 basis.

10. **ASSET MANAGEMENT SERVICES**

Supplier will perform asset management, including the services described in this **Clause 10** (collectively, the "**Asset Management Services**"). Supplier will perform the Asset Management Services in accordance with the processes and procedures set forth herein and the applicable SARS PPS&G, interfacing seamlessly and non-disruptively with such applicable SARS PPS&G.

10.1. **Supplier obligations**

Supplier shall:

10.1.1. within 2 (two) Business Days of any activity (including installation, Maintenance and Break-fix) by the Supplier resulting in an NISD Solution change, ensure that it provides SARS with updated information including the bar code, make, model, type, serial number, location, room, version and release of the NISD Solution components in question;

10.1.2. in the case of mobile NISD Solution, location based information will be the location of the NISD Solution where first installed. Where the Supplier performs a move of the NISD Solution, the Supplier must provide SARS with the updated location information.

10.1.3. as part of Maintenance, conduct asset verification of all NISD Solutions

against an asset list provided by SARS and provide SARS with information regarding the verification within 2 (two) Business Days of doing so;

10.1.4. affix SARS barcodes to any new assets should the Supplier install and/or commission any such assets; and

10.1.5. On SARS request, participate in ad hoc asset verification and related audit activities on a Time and Materials basis.

11. INCIDENT MANAGEMENT SERVICES

Supplier will perform Incident management, including the services described in this Clause 8 (collectively, the "**Incident Management Services**"). Supplier will perform the Incident Management Services in accordance with the processes and procedures set forth herein and in **Schedule C (Service Levels)** or the applicable SARS PPS&G, interfacing seamlessly and non-disruptively with such applicable SARS PPS&G.

11.1. Incident Management Procedures

11.1.1. Development

Within 15 (fifteen) days of the commencement date of a Work Order to this Agreement, Supplier will prepare for SARS's review and approval detailed Incident management processes and procedures for the Deliverables (the "**Incident Management Procedures**"). Such Supplier Incident management processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. The Incident Management Procedures will be based on the processes and procedures set forth in this **Clause 8** and to the extent consistent with the processes and procedures set forth in this **Clause 8**, Supplier's standard processes and procedures that it uses to perform Incident management services for other customers. Supplier will incorporate SARS's comments on the Incident Management Procedures and include the revised Incident Management Procedures in the Process and Procedures Library promptly, but in no event later than 30 (thirty) days after SARS has provided such comments.

11.1.2. Supplier will follow the Incident Management Procedures from the date that they have been approved by SARS. Before such date, the Supplier will follow the processes and procedures regarding Incident management that

are set forth in this **Clause 8** supplemented with Supplier's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 8**).

11.1.3. Updates

Supplier will promptly update the Incident Management Procedures to reflect any changes in the applicable SARS PPS&G. Supplier will submit the revised Incident Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 11.1.1** above.

11.2. Incident Recording

11.2.1. Recording Incidents

Supplier will report all Incidents and ensure that such Incidents are recorded, either by SARS or the Supplier directly, in the SARS Incident management system immediately upon their earliest detection. The fact that SARS records the Incident does not absolve Supplier of the obligation contained in this Clause 11.2.1.

11.2.2. Checking for the Same or Similar Incidents

When recording an Incident, Supplier will first check to see if there are similar open Incidents. If there are any similar open Incidents and they concern the same Incident, Supplier will update the Incident information and link the newly reported Incident to the existing Incident record. If this is the report of a new Incident but there have been other similar Incidents, this will be noted and addressed. Supplier will identify and analyse the reasons for any differences in the effectiveness of the resolution for similar Incidents.

11.3. Classification

All Incidents will be classified in accordance with the process set forth in this **Clause 11.3**. Supplier will comply with the then-current SARS PPS&G relating to Incident management and will interface closely with SARS so as to correctly identify and classify Incidents.

11.3.1. Process

In the first instance, Supplier will make such classification in accordance with SARS's then-current Impact and Urgency classifications in accordance

with the SARS PPS&G. If there is a disagreement as to the priority level that should be assigned to an Incident, the priority level will be that prescribed by SARS in its reasonable judgment.

11.3.2. Re-categorisation of Recurring Incidents

Supplier will re-categorise recurring Incidents to a higher Impact and Urgency classifications in accordance with the Incident Management Procedure.

11.3.3. Incident Record

Supplier will create and maintain an Incident record for each Incident containing details of the Incident symptoms, an initial Incident categorisation, and the Impact of the Incident. Supplier's records of Incidents will be designed to enable Supplier to measure and improve the affected processes, provide information required for other service management processes, and report on progress.

11.4. Communications

Supplier will keep the applicable SARS contact persons (as then specified in the Process and Procedures Library and escalation procedures) apprised of the status of Incident management activities on an on-going basis in accordance with the notification and escalation processes set forth in the Incident Management Procedure. Supplier's obligations in such regard will include:

- 11.4.1. documenting and maintaining in the Incident Management Procedures processes and procedures for notifying affected parties, including SARS, of Incidents, escalation paths, contacts and timescales;
- 11.4.2. alerting SARS of any Incidents in accordance with the Incident Management Procedures;
- 11.4.3. at SARS's request, informing the SARS Incident Manager about the estimated maximum time to Resolve the Incident, and apprising him or her of progress on an on-going basis;
- 11.4.4. at SARS's request, providing SARS with a preliminary report of the Incident on an expedited basis;
- 11.4.5. updating the Incident status in the relevant record in the SARS Incident management system promptly upon any developments so that it is up to date on a real time basis; and

11.4.6. notifying the SARS Incident management team promptly in accordance with the Incident Management Procedure in the event that an Incident is likely to require a Problem investigation, including informing the SARS Problem management team.

11.5. Resolution and Recovery

11.5.1. Supplier will Resolve Incidents and return the affected NISD Solution(s) to full performance in accordance with the Performance Standards, as soon as possible but in no event later than necessary to meet any applicable Service Levels with the least possible impact on the operations of SARS.

11.5.2. Supplier will provide SARS with prior notice of any temporary Workaround or permanent solution that:

11.5.2.1. may have a further impact on the Deliverables and/or on SARS;

11.5.2.2. represents a departure from SARS's processes; or

11.5.2.3. materially increases or is likely to materially increase the workload of SARS Personnel or SARS systems or SARS's costs.

The implementation of every temporary Workaround or permanent solution will be subject to the Operational Change Management Procedure. Without limiting the generality of the foregoing, Supplier will identify and describe all other temporary Workarounds on a report submitted by Supplier on the next Business Day after the Workaround was implemented.

11.6. Completion and Closure of Incidents

11.6.1. An Incident will not be Resolved until all Changes, the date and time of Resolution, the final classification and priority of the Incident, the Deliverables/functions that were affected, any Workarounds have been captured on the SARS Incident management system.

11.6.2. When an Incident has been Resolved, Supplier will record the Incident as completed and communicate this fact to SARS.

11.6.3. Supplier will participate in Incident *post mortem* review and improvement activities to prevent the re-occurrence of the Incident and to improve the Incident Management Procedures.

11.7. Incident Management Services Outputs

The outputs of Incident Management Services include:

- 11.7.1. Incident Management Procedures;
- 11.7.2. Up-to-date records in the SARS's Incident tracking system (updated with information about each Incident relating to status, solutions, and Workarounds);
- 11.7.3. Change request records implemented to Resolve Incidents; and
- 11.7.4. Management information relating to Incident Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

12. PROBLEM MANAGEMENT SERVICES

Supplier will perform Problem management including the services described in this Clause 12 (collectively, the "**Problem Management Services**") and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that interfaces seamlessly and non-disruptively with the applicable SARS PPS&G. In performing the Problem Management Services, Supplier will minimise the adverse effect of Problems on SARS's operations, the Deliverables and proactively minimise the Impact and prevent the occurrence of Problems.

12.1. Problem Management Procedures

12.1.1. Development

Within 15 (fifteen) days of the commencement date of a Work Order to this Agreement, Supplier will prepare for SARS's review and approval detailed Problem management processes and procedures for the Problem Management Services ("**Problem Management Procedures**"). Such Supplier Problem management processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. The Problem Management Procedures will be based on the processes and procedures set forth in this **Clause 12** and, to the extent consistent with the processes and procedures set forth in this **Clause 12**, Supplier's standard processes and procedures that it uses to perform Problem Management Services for other customers. Supplier will incorporate SARS's comments on the Problem Management Procedures

and include the revised Problem Management Procedures in the Process and Procedures Library promptly, but in no event later than 30 (thirty) days after SARS has provided such comments.

Supplier will follow the Problem Management Procedures from the date that they have been approved by SARS. Before such date, the Supplier will follow the processes and procedures regarding Problem management that are set forth in this **Clause 12** supplemented with Supplier's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 12**).

12.1.2. Updates

Supplier will promptly update the Problem Management Procedures to reflect any changes in the applicable SARS PPS&G. Supplier will submit the revised Problem Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 12.1.1**.

12.2. Proactive Problem Management

Supplier will use Commercially Reasonable Efforts to proactively prevent Problems, including by means of performing trend analysis and identifying potential Incidents before they occur. Supplier will use Commercially Reasonable Efforts to prevent failures from spreading. Supplier will identify and investigate weaknesses of infrastructure components.

12.3. Problem Control

Supplier will be responsible for identifying Problems and investigating their root cause in accordance with the terms of this **Clause 12.3 ("Problem Control")**. When the Problem investigation has identified the root cause of a Problem and a resolution to the Problem, the Problem will be classified as a Known Error. In performing Problem Control, Supplier will perform the following services:

12.3.1. Problem Identification and Recording

Supplier will associate Incidents caused by one or more Problem(s) with such Problem(s), including Incidents that recur or are expected to recur, as well as any single significant Incident.

12.3.2. Problem Classification

Supplier will analyse Problems and classify them in accordance with

SARS's then-current Impact and Urgency classifications. The analysis will include an Impact analysis assessing the seriousness of the Problem and its effect on the Deliverables. Supplier will confer with SARS in formulating these classifications and categorizations. If there is a disagreement as to the priority level that should be assigned to a Problem, the priority level will be that prescribed by SARS in its reasonable judgment. Factors to be considered in determining the classification of a Problem will include:

- 12.3.2.1. category: identifying the relevant domain, for example hardware or software;
- 12.3.2.2. Impact on the business;
- 12.3.2.3. Urgency: extent to which deferral of the solution is acceptable;
- 12.3.2.4. priority; and
- 12.3.2.5. status: e.g. Problem, Known Error, Resolved, closed pending a post-implementation review.

These classifications and categorisations will be updated to reflect any changes during the Resolution of the Problem. For example, new Incidents may increase the Impact and Urgency, and accordingly the priority of a Problem.

12.3.3. Problem Investigation and Resolution

- 12.3.3.1. Supplier will investigate and diagnose each Problem to achieve a Resolution.
- 12.3.3.2. Supplier will perform the Error Control activities described below in **Clause 12.4**.
- 12.3.3.3. If a temporary fix requires modification of infrastructure, Supplier will implement it in accordance with the Operational Change Management Procedures.
- 12.3.3.4. Supplier will comply with and interface with SARS's Problem management processes and procedures.
- 12.3.3.5. Supplier will correctly identify Problems and investigate and monitor the Problem(s) to Resolution.
- 12.3.3.6. Supplier will conduct a formal root cause analysis to identify the origin of each Problem that : (i) gave rise to a Service Level Failure; (ii) result from a Severity One Incident; or (iii) repeat

Incident.

- 12.3.3.7. Once Supplier has identified the root cause of a Problem and a method of resolving it, such Problem will be classified as a Known Error. Supplier will record all Known Errors against the current and potentially affected Deliverables in addition to the component at fault and any Workarounds. Known Errors will not be closed until they have been Resolved.
- 12.3.3.8. Supplier will use Commercially Reasonable Efforts to eliminate the root cause of each of the types of Problems specified in **Clause 12.3.3** and prevent recurrence of such Problem, including by means of performing a detailed review of each such Problem.
- 12.3.3.9. Supplier will facilitate Problem management investigations and reviews of Problems, including identifying Problem trends.
- 12.3.3.10. Supplier will participate in cross-functional Problem determination activities, including facilitating Problem management review and Problem management investigation meetings as reasonably required by SARS.
- 12.3.3.11. Supplier will adhere to the mutually agreed Problem escalation path for each Problem severity group.
- 12.3.3.12. Supplier will take 'ownership' for all Problems assigned to Supplier by SARS, including using Commercially Reasonable Efforts to manage Third Party Suppliers where necessary in order to determine the root cause of and/or Resolve the Problem.
- 12.3.3.13. Supplier will report to SARS during the normal reporting cycle the results of any root causes analyses conducted with respect to Problems that were not the result of a Severity One Incident(s) or did not cause a Service Level Failure.
- 12.3.3.14. Supplier will report to SARS daily Supplier's progress in conducting root causes analyses on each Problem that gave rise to a Service Level Failure or was the result of a Severity One Incident.
- 12.3.3.15. Supplier will conduct all root cause analyses in accordance with

the applicable procedures set forth in the Process and Procedures Library.

12.3.3.16. With respect to each Problem that:

12.3.3.16.1. gave rise to a Service Level Failure; or

12.3.3.16.2. results from a Severity One Incident,

Supplier will provide SARS with: (1) a plan for correcting such failure and preventing its recurrence; (2) reasonable evidence that the Problem has been corrected and will not recur, and (3) a detailed explanation of Supplier's contingency plan.

12.4. **Error Control**

Supplier will monitor and manage Known Errors until they are successfully resolved ("**Error Control**"). Supplier will perform Error Control in accordance with the Operational Change Management Procedures and evaluate the changes in a post-implementation review, as described in **Clause 12.5**. Supplier will monitor and report on all Known Errors from their identification through to their Resolution.

12.5. **Problem Closure and Post-Implementation Review**

When they are resolved, Supplier will record Problems and Known Errors as resolved. Only SARS will close Problems. Once implemented, all Changes to resolve Problems and Known Errors will be reviewed in a post-implementation review. SARS will not close the Problem until: (i) the post implementation review ("**PIR**") has been completed; (ii) any other steps mandated under the relevant SARS PPS&G have been completed; and (iii) the Parties agree (acting reasonably) that the Change(s) was (were) implemented in such a fashion so as to Resolve the Problem or Known Error. In such case, all related Problem and Known Error records, together with their associated Incident records, will be closed by SARS. For Problems designated as major, in SARS's reasonable judgment, a separate major Problem review will promptly be undertaken jointly by Supplier and SARS to identify:

12.5.1. what was done well;

12.5.2. what was done badly;

12.5.3. how it can be done better in future; and

12.5.4. further steps Supplier should take to prevent a recurrence.

12.6. **Communications**

Supplier will keep applicable SARS contacts apprised of the status of Problem management activities in accordance with the Problem Management Procedure notification and escalation processes. Supplier's obligations will include:

- 12.6.1. alerting SARS of any Problems in accordance with the Service Levels; and
- 12.6.2. at SARS's request, providing a preliminary report of the Problem on an expedited basis to SARS.

12.7. **Problem Management Service Outputs**

The outputs of Problem Management Services include:

- 12.7.1. Problem Management Procedures;
- 12.7.2. a Known Error database, which is a subset of the Problem management system;
- 12.7.3. up-to-date Problem records (updated with information about status, Known Errors, solutions and/or Workarounds);
- 12.7.4. closed Problem records (once the root cause has been eliminated and the Problem Resolved);
- 12.7.5. matching of Incidents to Problems and Known Errors;
- 12.7.6. Problem reports indicating history and status of Problems, categorised by type, time period and status as reasonably requested by SARS; and
- 12.7.7. management information relating to Problem Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

13. **OPERATIONAL CHANGE MANAGEMENT SERVICES**

13.1. **Introduction**

13.1.1. Supplier will perform operational Change management, including the Deliverables described in this **Clause 13 ("Operational Change Management Services")** and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that:

- 13.1.1.1. interfaces seamlessly and non-disruptively with the SARS PPS&G relating to operational Change management and the

other Service Management processes;

13.1.1.2. facilitates the efficient and prompt handling of any Changes made by Supplier; and

13.1.1.3. facilitates making Changes quickly and with the least possible impact on the operations of SARS or on the affected users.

13.1.2. A "**Change**" is any modification, alteration, or other change made by Supplier to:

13.1.2.1. the Deliverables; or

13.1.2.2. the NISD Solutions.

Examples of Changes include changes to equipment, systems or processes, configuration changes, changes in technology, changes to environmental parameters and changes to policies or procedures.

13.1.3. No Change may commence without the prior approval of the SARS Change Advisory Board ("**SARS CAB**"). SARS may withhold approval for any Change, in its sole discretion.

13.2. **Operational Change Management Procedures**

13.2.1. Within 15 (fifteen) days of the commencement date of a Work Order to this Agreement, Supplier will prepare for SARS's review and approval detailed operational Change management processes and procedures for the Operational Change Management Services. Such processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other service management processes. Supplier will incorporate SARS's comments on such processes and procedures and include such revised procedures in the Process and Procedures Library promptly but in no event later than 30 (thirty) days after SARS has provided such comments ("**Operational Change Management Procedures**"). The Operational Change Management Procedures will be based on the processes and procedures set forth in this **Clause 13.2** and, to the extent consistent with the processes and procedures set forth in this **Clause 13.2**, Supplier's standard processes and procedures that it uses to perform operational change management services for other customers.

13.2.2. Supplier will follow the Operational Change Management Procedures from the date that they have been approved by SARS. Before such date, the

Supplier will follow the processes and procedures that are set forth in this **Clause 13.2** supplemented with Supplier's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 13.2**).

13.2.3. Supplier will promptly update the Operational Change Management Procedures to reflect any Changes in the applicable SARS PPS&G. Supplier will submit the revised Operational Change Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 13.2** above.

13.2.4. The Operational Change Management Procedures must meet the following requirements:

13.2.4.1. the Operational Change Management Procedures will include a set of sub-processes designed to: (i) manage and control the response to planned Changes; (ii) control creation and execution of plans for approved projects, including reporting on progress and issues; (iii) ensure that ownership responsibilities for resources will be properly exercised; and (iv) assess the potential operational impact of Changes on SARS;

13.2.4.2. the Operational Change Management Procedures will embody the principle that Changes may only be commenced after approval by the SARS CAB.

13.2.4.3. the Operational Change Management Procedures will include procedures for co-ordinating Change activity with SARS's operational change procedures as set out in the applicable SARS PPS&G consistent with **Clause 13.1.2**. As part of such co-ordination, Supplier will utilise the SARS Operational Change Management Procedures for each Change; provide any required information, notices or updates; provide or participate in (as requested by SARS) assessments, evaluations or analyses of the proposed Change, including its Impact and Urgency; seek SARS approvals and provide for SARS reviews when mandated (for example, approvals will be required to proceed with planning a Change and subsequently to implement such Change); promptly notify SARS of status updates and any problems in implementation; and participate in post-implementation reviews and/or verifications. In doing so,

Supplier will adhere to the relevant timescales specified in the applicable SARS PPS&G or otherwise specified by SARS;

- 13.2.4.4. the Operational Change Management Procedures will facilitate a high degree of co-ordination and communication across SARS business units and agents and facilitate measures to minimise the business Impact and risk to SARS of any Change activity;
- 13.2.4.5. the Operational Change Management Procedures will provide processes for managing conflicts of timing, resources and priorities;
- 13.2.4.6. the Operational Change Management Procedures will enable the clear assignment of responsibility for individual Changes to be established and maintained throughout the Change process, with regular and applicable progress updates communicated back to those affected; and
- 13.2.4.7. the Operational Change Management Procedures will include an emergency change process for any Changes that must be implemented in less than the minimum scheduled change period provided for by the applicable SARS PPS&G, including for a Change that is judged by SARS as to have a material operational impact and is classified by SARS as 'urgent' and a Change needed in response to an Incident.

13.3. **Processing Operational Changes**

13.3.1. **Recording**

Supplier will plan and submit all requests for Change ("**Requests for Change**" or "**RFC**") to SARS. When an RFC is submitted in order to diagnose or Resolve an Incident, Problem or Known Error, Supplier will also indicate the related Incident, Problem or Known Error.

13.3.2. **Acceptance**

SARS shall consider such RFC and shall inform Supplier accordingly. Should SARS accept the RFC, such Change shall be dealt with in accordance with this Agreement.

13.3.3. **Approval**

All Changes will be implemented only after Supplier has obtained the required approvals in accordance with the applicable SARS PPS&G. Where Supplier has obtained the required approvals for the use of a Standard Change, Supplier will not be required to obtain SARS's approval for further implementations of such Standard Change as long as there are no alterations to the design or the use of the Standard Change has been withdrawn. The other Operational Change Management Procedures relating to implementing a Change will apply to each implementation of a Standard Change (e.g. co-ordination and requirements regarding scheduling implementation of the Change, any required testing, etc.).

13.3.4. Executing Changes

13.3.4.1. Plan and Build Phase

13.3.4.1.1. Where applicable, Supplier will plan and execute a specific building phase for Changes.

13.3.4.1.2. Supplier will prepare a sufficiently detailed back-out plan (i.e., a plan describing the process to be followed to reverse a Change) ("**Back-out Plan**") before implementing any Change that could have an adverse impact (as determined by SARS) on SARS, the Services, traders or SARS constituents if the Change is not successful or cannot be completed on time. Such Back-Out Plan will include:

- fall-back procedures if it is necessary to reverse a Change due to a failure;
- modification and escalation lists;
- Workaround plans; and
- risk assessments.

13.3.4.1.3. Supplier will prepare a sufficiently detailed communication plan before implementing any Change that impacts SARS business.

13.3.4.1.4. Supplier will prepare a sufficiently detailed implementation plan for all Changes.

13.3.4.2. Testing

Unless SARS agrees otherwise:

13.3.4.2.1. before implementing any Changes (or as otherwise mutually agreed in a specific instance), Supplier will test the back-out procedure (as reflected in the Back-out Plan), Change implementation, and envisaged result of the Change. In conducting such testing, Supplier will give due consideration to any change criteria defined by the SARS CAB.

13.3.4.2.2. with respect to a particular Change, Supplier will develop for SARS's approval a test plan and acceptance criteria for each Change. Supplier will proactively recommend objective test criteria for approval by SARS. The determination as to whether a test was successful will be made on the basis of whether the test results met the applicable acceptance criteria for the testing effort as set out in the relevant test plan.

Supplier will use Commercially Reasonable Efforts in fulfilling its testing obligations for Changes and will include performing testing on such components in as near real life conditions as is according to SARS's instructions.

13.3.4.3. Implementing

13.3.4.3.1. After completing the building and testing activities described in **Clauses 13.3.4.1** and **13.3.4.2** Supplier will implement the Change, after obtaining the necessary approvals to implement, in accordance with this **Clause 13.3.4.3** and conduct additional testing in order to verify that the implementation of the Change was successful.

13.3.4.3.2. Supplier will implement all Changes authorised by SARS. Supplier's obligations for implementing Changes, including Changes that are incorporated into Projects that have been approved for implementation, will include:

- project managing the implementation of the Change;

- keeping SARS informed (through the person nominated by SARS to co-ordinate the change) on an ongoing basis as to the status of the implementation of the Change, including providing status reports; and
- mutually agreeing the applicable tests with SARS prior to commencing with the implementation of a Change.

13.3.5. Evaluation

- 13.3.5.1. Supplier will evaluate all Changes after they have been implemented and apprise the person nominated by SARS to co-ordinate the change of the results of its evaluation.
- 13.3.5.2. The person nominated by SARS to co-ordinate the change will decide whether any follow-up is needed, based on considerations such as whether the Change achieved the expected objective, whether users are satisfied with the result, and whether there were any side effects.
- 13.3.5.3. Upon completing the RFC SARS will verify that the Change was completed successfully and thereafter the RFC will be marked as completed.
- 13.3.5.4. If the Parties do not agree that the Change was successful, Supplier will restart the Operational Change Management Procedure where it went wrong, using an approach that: (i) is modified to address the failure(s); and (ii) is approved by SARS before Supplier may recommence performing the Change.

13.3.6. Implementing Urgent Changes

- 13.3.6.1. Supplier will implement urgent Changes in accordance with SARS's PPS&G addressing emergency or urgent Change procedures. Where a diversion of resources of Supplier would allow an urgent Change to be implemented more quickly, Supplier will apprise SARS of that option, including the consequences to the Deliverables that the redeployed resources would have performed. If SARS in its sole discretion authorises the redeployment, Supplier will be excused for failing

to perform Deliverables in a timely fashion that the redeployed resources would have performed, but solely to the extent of the impact advised by Supplier in advance, and solely to the extent Supplier could not reasonably have performed the affected Deliverables nonetheless using Commercially Reasonable Efforts.

13.3.6.2. Where possible, SARS will organise an emergency meeting of those SARS CAB members whose participation is needed to evaluate, authorise, and provide the resources for an urgent Change.

13.3.6.3. Where time does not permit normal tests to be performed before an urgent Change is made as agreed by SARS, as soon as possible thereafter Supplier will complete all the required stages of the normal testing process.

13.3.7. Procedures for Submitting Changes

Supplier will submit all Changes in accordance with the requirements set out in the SARS PPS&G.

13.3.8. Other Operational Change Management Responsibilities

13.3.8.1. Supplier will attend SARS's regularly scheduled and ad hoc meetings regarding operational Change management in respect of the Deliverables when called upon to do so by SARS.

13.3.8.2. Supplier's responsibilities with respect to operational Change management also include the following:

13.3.8.2.1. implementing Changes in a manner that ensures continuity; and

13.3.8.2.2. collecting data on each Change attempted, including the cause of any resulting Incidents or Problems, measures taken to prevent reoccurrence, and impact on end users.

14. PROJECTS AND PROJECT MANAGEMENT SERVICES

Supplier will perform Projects and provide project management including the Deliverables described in this **Clause 14** (collectively, "**Projects**" and "**Project Management Services**") and will do so in accordance with the processes and

procedures set forth or referred to herein and in a manner that interfaces seamlessly and non-disruptively with SARS's processes and procedures for project management.

14.1. **Best Practices**

In performing Projects and providing Project Management Services Supplier will apply best practices including with respect to its planning, execution and management of Projects.

14.2. **Projects**

Supplier's obligations in relation to Projects will include:

- 14.2.1. utilising project management methodologies, knowledge, skills, tools, and techniques consistent with leading internationally recognised and accepted project management practices as updated from time to time. Supplier will be responsible for understanding SARS's requirements, defining the scope of and planning the Project and managing execution to successful completion;
- 14.2.2. maintaining applicable levels of industry knowledge to provide support of and recommendations for Projects;
- 14.2.3. managing knowledge transfer and continuity by ensuring that a significant portion of each Project team remains working on the Project from inception until completion of that Project;
- 14.2.4. unless and to the extent SARS agrees otherwise, developing functional and technical requirements and Project plans, including cost, on-going maintenance support requirements, risk, alternatives and recommendations with specific references to any variances to SARS's Project plans and requirements;
- 14.2.5. using Supplier's methodology for the aspects of Projects being worked upon by Supplier and working with SARS to help ensure that Supplier's methodology aligns with SARS PPS&G as seamlessly and non-disruptively as possible;
- 14.2.6. providing a Supplier project manager for each Project. Supplier project managers will be Supplier Personnel for any significant Projects; and
- 14.2.7. managing all Subcontractors' and Third Party Suppliers' participation in a

Project.

14.3. Project Management Services

Supplier's obligations relating to Project Management Services include:

14.3.1. preparing proposals and plans for Projects for approval by SARS. Except to the extent otherwise agreed by SARS, such proposals and plans will be consistent with SARS's approved processes and templates and will include:

- 14.3.1.1. the details of the initiator of the proposed Project or project;
- 14.3.1.2. the project charter/project definition report for the Project or project;
- 14.3.1.3. the Project Plan setting forth the Project's tasks, schedule and Deliverables;
- 14.3.1.4. the business requirements for the work and the Deliverable(s) to be provided;
- 14.3.1.5. the functional and technical approach, solution and acceptance criteria;
- 14.3.1.6. the quantitative and qualitative benefits anticipated to be received by SARS as a result of performing the Project;
- 14.3.1.7. the total number and type(s) of technicians and other professional and skilled manpower required for the Project;
- 14.3.1.8. a description of any hardware, software, or other materials or resources required for the Project and on-going support;
- 14.3.1.9. the Performance Standards to which the Project shall comply;
- 14.3.1.10. the total projected elapsed time to complete the Project and any time constraints or mutually agreed material assumptions;
- 14.3.1.11. the total cost of the Project (where applicable, including fees paid to Supplier as well as any costs or expenses to be borne or otherwise retained by SARS), the timing of any such payment(s) and whether the cost is included in the Charges and demonstrating compliance with the agreed rates contained in **Appendix D-3 (Personnel and Material Rates)**;
- 14.3.1.12. the on-going annual cost of the Project post-implementation

(where applicable, including fees paid to Supplier as well as any costs or expenses to be borne or otherwise retained by SARS), the timing of any such payment(s) and whether the cost is included in the Charges and demonstrating compliance with the agreed rates contained in **Appendix D-3 (Personnel and Material Rates)**;

- 14.3.1.13. a rating of the relative risk of the Project and possible alternatives to the Project;
- 14.3.1.14. any other material assumptions related to the Project, including any support required from SARS or its or Supplier's Third Party Suppliers in relation to the Deliverables; and
- 14.3.1.15. any other provisions or information necessary to describe the work needed to complete the Project;
- 14.3.2. defining scope, Deliverables, milestones, project schedules and anticipated risks for all Projects;
- 14.3.3. defining and monitoring the support resources required for the Projects;
- 14.3.4. testing and, as applicable, piloting, integrating and installing technology components to verify that the Project does not cause an unexpected adverse impact to the existing Deliverables or the SARS business and/or IT environment;
- 14.3.5. managing and co-ordinating the Project with SARS including the applicable SARS project managers and the SARS lead project managers as required, from start until successful completion including liaising as necessary with Third Party Suppliers and acting as a SPOC for SARS;
- 14.3.6. managing the Project communication with SARS including the applicable SARS project managers and the SARS lead project managers as required, from start until successful completion including liaising as necessary with Third Party Suppliers and acting as a SPOC for SARS;
- 14.3.7. ensuring immediate notification to the requestor of the Project shortly after sign-off approval is obtained;
- 14.3.8. meeting with SARS as necessary or reasonably requested by SARS to manage and deliver the Project and Deliverables effectively, including supporting and participating in:

- 14.3.9. all Project management committees;
- 14.3.10. related SARS business planning meetings in support of the Projects or SARS project managers, as required to review operations and business plans and make recommendations to support the Project;
- 14.3.11. co-ordinating changes required by a Project in accordance with the Operational Change Management Procedure;
- 14.3.12. supplying data as reasonably required by SARS to assist SARS to obtain the financial authorisation for the Project, including assisting SARS to produce the initial and full business cases for the Project as well as progress reports against budgets;
- 14.3.13. tracking, controlling and reporting Project expenditure on an on-going basis;
- 14.3.14. ensuring that Changes are submitted to SARS in a timely manner;
- 14.3.15. assisting with SARS's preparations of rolling Project portfolios, providing budget estimates for work to be performed by Supplier during the following 12 (twelve) months;
- 14.3.16. measuring, tracking, and evaluating progress against the Project Plans;
- 14.3.17. maintaining files of the Project plans and any associated documentation;
- 14.3.18. addressing the Resolution of Project issues and escalating such issues promptly to the SARS project managers and, where applicable, the SARS lead project manager;
- 14.3.19. planning, scheduling, conducting and participating in periodic Project planning;
- 14.3.20. holding status meetings, as applicable, which include a review of the work products or other Deliverables being produced;
- 14.3.21. co-ordinating and scheduling the attendance of Services personnel as applicable, at such periodic planning, review and status meetings;
- 14.3.22. reviewing and confirming that the Deliverables meet the completion criteria set out in the applicable Project Plan;
- 14.3.23. managing the quality of the Project Deliverables;
- 14.3.24. managing the transition from Project to process;
- 14.3.25. conducting the Project post-implementation review sessions to identify and

minimise the recurrence of any problems or issues; and

14.3.26. preparing the Project history conclusions ('lessons learned') for use on future Projects by Supplier or SARS.

14.4. **Project Requirements**

14.4.1. Supplier is not authorised to commence any Project work without SARS's purchase order. With SARS's approval, for Projects only, Supplier will charge SARS for Project labour on a Time and Materials Basis no greater than the rates set out in Appendix D-3 (Personnel and Material Rates).

14.4.2. SARS may cancel, postpone, or change a Project that has not commenced upon notice to Supplier. SARS may terminate a Project in advance of its completion upon 14 (fourteen) days prior written notice to Supplier. Supplier will be paid for work performed, and other reasonable expenses (such as hardware and payments to Subcontractors) on a Project that is terminated, up to (and including) the effective date of such termination (unless payment for a longer period is agreed in advance by SARS, such agreement to be in SARS's sole discretion; provided that Supplier will use Commercially Reasonable Efforts: (i) to redeploy its personnel performing such work as soon as possible upon receipt of notice of termination; (ii) to negotiate into subcontracts provisions permitting Supplier to terminate subcontracts for convenience without payment upon termination of the Project or project by SARS; and (iii) otherwise to mitigate any such expenses (such as by re-using or reselling hardware purchased for the terminated Project or project). Changes to a Project (e.g. schedule, tasks) will be as reasonably required by SARS following the establishment of the Project, and Supplier will use Commercially Reasonable Efforts to accommodate such Changes as soon as practicable.

15. **IMACD SERVICES**

15.1. In line with SARS' service orientation the Supplier will provide Install, Move, Add, Change and Disposal (IMACD) services on request.

15.2. Any requested IMACD service will fall within the context of a specific solution encompassed in a Scanner Category and be subject either to an RFQ process or specifically included in the Work Order or Change Order.

15.3. All requested IMACD services will be provided by the Supplier in terms of the provisions of "Projects and Project Management Services" described in Clause 11.

16. OTHER SERVICE MANAGEMENT SERVICES AND TERMS

16.1. Consulting Services

Supplier will provide to SARS consulting services as reasonably requested by SARS in accordance with this **Clause 16.1 ("Consulting Services")**. Unless otherwise expressly provided, all Consulting Services will be provided by Supplier at no additional charge. Where this Agreement expressly authorises Supplier to charge separately for Consulting Services, any such Consulting Services will be provided on a Time and Materials Basis or, if the Parties agree, on a fixed price basis and a Project. Examples of Consulting Services that SARS may request Supplier to perform include:

16.1.1. Future Technology Delivery

Supplier will proactively identify strategies and approaches for future technology delivery within SARS that may provide SARS with efficiency improvement, service improvement or cost reduction opportunities. Supplier will assist SARS in setting SARS's technology direction and strategy.

16.1.2. Management of Technology Offerings

Supplier will support SARS in the management and representation of technology product and service offerings to its internal clients;

16.1.3. Identification of Product and Enhancement Opportunities

Without limiting the generality of Supplier's obligations to provide on-going innovation, Supplier will identify product and enhancement opportunities for improved performance, and notify SARS of such opportunities; and

16.1.4. Recommending Improvements

Without limiting Supplier's backup and restore obligations, Supplier will recommend improvements in procedures and tools, including implementing redundancy measures where required.

16.2. Enhancement, Customisation, Development and Integration Services

16.2.1. The Supplier will assist and provide SARS with enhancement,

customisation, development and integration services during the lifespan use of the various NISD Solutions, hardware, software and systems.

16.2.2. All modifications to systems hardware and software will be tested in advance and deployed using SARS' change management processes.

16.3. **Infrastructure Provisioning**

16.3.1. Suppliers must be capable of responding to a possible request from SARS to construct customised building structures suitable for housing Non-intrusive Inspection Scanning and Detection Solutions.

16.3.2. The building structure will comply with all applicable building, health, fire and safety regulations.

16.3.3. Regardless of whether specifically required in the terms of the Work Order, the Supplier must ensure that it is in possession of the necessary CIDB registration(s) to perform work specified in an RFQ and must bring such registration requirement to SARS's attention before the conclusion of the Work Order.

16.3.4. The precise details of the requested structure will be advised by SARS as part of any future RFQ issued within a Scanner Category.

16.4. **Training**

16.4.1. The Supplier will be capable of providing training in the operation of the provided NISD Solution to SARS staff both initially as part of the solution delivery and on request by SARS during the life of a NISD Solution provided by the Supplier.

16.4.2. The Supplier will provide all requested training on a time and materials basis.

16.4.3. The training content is to include at a minimum the following topics:

16.4.3.1. archiving and retrieval of images

16.4.3.2. quality management

16.4.3.3. scanner operating procedures

16.4.3.4. health and safety compliance

16.4.3.5. image analysis training;

16.4.3.6. trouble shooting;

16.4.4. The Supplier will provide SARS with generic image recognition training on request.

16.5. **Management and Operational Reporting Services**

16.5.1. When requested to do so, the Supplier will collaborate with SARS on a project basis to develop at least the minimum set of reports as described in Table 12 of the Business Requirements Specification.

16.5.2. The Supplier will make every reasonable effort to integrate to SARS Active Directory security system and to log reports to SARS Microsoft SQL server.

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APPENDIX B-1: DEPENDENCIES

[Note to the Bidder: Except where explicitly indicated in the Business Requirement Specification, SARS is seeking an end to end Scanner Category solution and disfavours solutions which shift responsibilities back to SARS.]

With this in mind, the Bidder must identify any dependencies on which the Charges or any of Supplier's responsibilities may depend.]

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APPENDIX B-2: SITE LIST

[Note to the Bidder: The full list of current sites where SARS may require a Scanner Category solution will be provided at the conclusion of the agreement. Hence the solution must be adaptable to border post or seaport environments (all weather operation capability)]

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APPENDIX B-3: REPORTS

[Note to the Bidder:

This Appendix B-3 (Reports) will be completed as part of final contract negotiations. SARS's minimum requirements are stated below. The Bidder is encouraged to specify and propose additional reports which the Bidder offers to supply to SARS as part of any Work Order concluded between the Bidder and SARS. The additional reports which the Bidder proposes as part of its solution should be completely specified with sample output if possible, including the mode of delivery, frequency, detail of fields etc.

The Bidder should supply details of the reports/screens/custom enquiries that would be made available.

The Reports listed below represent SARS's minimum requirements of what is expected to be provided by the Supplier as applicable]

1. REPORTING SOURCE INFORMATION

1.1. The Supplier will keep and make available to SARS following data fields per device at a minimum:

Operator details (name, department, personnel number, contact details)

Date and time stamp of the image

Number of marked- up images

Image count

Device availability

Device in-service hours

Utilization rate – no. of scans done per hour / day etc.

All scanned files per unit scanned with all applicable metadata (scan image file, NPR, time and date, short video file of observation cameras)

1.2. The Supplier will provide reasonable assistance to SARS in the development of SARS-specific reports that have a dependence on the information from the NISD

Solutions.

2. DAILY / WEEKLY / MONTHLY / ANNUAL OPERATIONAL REPORTING

Daily Operational Reports must be submitted daily before 7h00 on each Business Day and must be submitted via email in a format prescribed by SARS.

2.1. Operator Performance Report - a summary report on the detailed performance of each individual Operator. This includes:

- 2.1.1. scan count
- 2.1.2. hours of operation
- 2.1.3. login / logout times

2.2. Device Performance Report

- 2.2.1. image storage capacity utilisation
- 2.2.2. hours of operation / number of scan images until next maintenance activity

2.3. Operational management reports, including

- 2.3.1. Outstanding Incident and Problem Status;
- 2.3.2. Incident and Problem completed;
- 2.3.3. Maintenance completed;
- 2.3.4. root cause analysis report since the previous report (where applicable); and
- 2.3.5. Status of planned Changes.

2.4. Monthly operational reports, including

- 2.4.1. Exception reporting including discrepancies, Excused Performance requests, corrections, deviations from contractual obligations and the like;
- 2.4.2. recommendations;
- 2.4.3. trend analysis with 6 month history;
- 2.4.4. summary of root cause analysis over the reporting period;

- 2.4.5. financial reporting;
 - 2.4.6. supply chain reporting (providers, costs per services/goods);
 - 2.4.7. use of Parts: new, remanufactured or refurbished; and
 - 2.4.8. summary of important factors affecting delivery.
- 2.5. Annual Business reports, including
- 2.5.1. Subcontractor utilisation reporting;
 - 2.5.2. summary of business value added;
 - 2.5.3. cost savings report; and
 - 2.5.4. aggregated summary of monthly Report.

APPENDIX B-4: ESCALATION PROCEDURES

[Note to the Bidder: this schedule will be completed as part of final contract negotiations.]

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SCHEDULE C: SERVICE LEVELS

Appendices and Attachments

Appendix C-1	Service Levels and Credits
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1. INTRODUCTION

1.1. General

1.1.1. This **Schedule C (Service Levels)** and its appendices set out the Service Levels that will apply during the Term and the method for calculating any Service Level Credits that may apply if Supplier fails to perform the Deliverables in accordance with such Service Levels.

Appendix C-1 (Service Levels and Credits) sets out the Service Levels, Critical Deliverables and Service Level Credits that apply.

1.1.2. The measurements and Service Levels set forth in this **Schedule C (Service Levels)** and its appendices will be used to measure Supplier's performance of the Deliverables. During the Term, new Service Levels may be added by SARS or substituted by agreement between the Parties in order to achieve a fair, accurate, and consistent measurement of Supplier's performance of the Deliverables. For example, such additions or substitutions may occur in conjunction with changes to the environment and the introduction of new NISD Solution hardware or Software or means of performance of Deliverables; provided, however, that where such hardware or Software or means of performance of Deliverables is a replacement or upgrade of existing technology, there will be a presumption of equivalent or improved performance.

1.1.3. Supplier will monitor its performance of the Deliverables with respect to the Service Levels on a continuous basis.

1.1.4. SARS will measure and report on Supplier's performance of the Deliverables with respect to the Service Levels as set out in this **Schedule C (Service Levels)**.

1.1.5. Any disputes regarding the accuracy of the Service Level reports produced

by the Supplier that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in **Clause 25** of the **Main Agreement**.

1.2. **Service Levels**

1.2.1. Supplier will perform the Deliverables set out in accordance with **Appendix C-1 (Service Levels and Credits)** with the Service Levels from the Commencement Date.

1.2.2. From the Commencement Date of a Work Order or Change Order, Supplier will perform the services in accordance with this **Schedule C (Service Levels)**. Moreover, Supplier will perform the Deliverables promptly, using reasonable skill and care and in a professional and workmanlike manner. Supplier will also perform the Deliverables in accordance with any other Performance Standards specified in the Agreement; and applicable Work Order or Change Order.

1.3. **Changes in Service Levels**

The Service Levels will be reviewed annually upon each anniversary of the Effective Date. SARS and Supplier will review the Service Levels and will make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to perform the Deliverables. The Service Levels will be improved over time.

2. **PERFORMANCE AGAINST SERVICE LEVELS**

2.1. **Measurement**

2.1.1. Except as otherwise set out in the description of the individual Service Level, Supplier's performance with respect to the Service Levels will:

2.1.1.1. commence being measured by Supplier on the Commencement Date of an approved Work Order or Change Order; and

2.1.1.2. be measured against Supplier's Actual Performance of the Deliverables against the Service Levels, not merely a sampling of its performance of such Deliverables.

2.1.2. Except as otherwise specifically provided herein, SARS will measure and report to the Supplier on performance as required to apply the Service

Levels.

- 2.1.3. SARS will provide web based access to Remedy and Supplier will utilise Remedy to collect, calculate and report data as required to determine Supplier's compliance with each of the Service Levels.
- 2.1.4. Unless otherwise specified by SARS, Supplier will be responsible for monitoring performance as required to manage the Service Levels.

2.2. Time Periods

Except as otherwise specified:

- 2.2.1. all references to hours will be to actual hours during a calendar day and not to Business Hours;
- 2.2.2. all references to time will be to local time at the site at which the Service is being received;
- 2.2.3. all references to days, months and quarters will be to calendar days, calendar months and calendar quarters, respectively; and
- 2.2.4. where a time period is specified by a number of Business Days it will exclude the first Business Day and include the last Business Day.

2.3. Actions on Failures

- 2.3.1. In respect of any Service Level Failure, Supplier will:
 - 2.3.1.1. investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the Incident, including performing an appropriate root cause analysis of each Incident which led to the Service Level Failure;
 - 2.3.1.2. propose and execute a written corrective action plan;
 - 2.3.1.3. advise SARS of the status of remedial efforts being undertaken with respect to such Incident. In this respect, Supplier will track the status of such remedial efforts and make available such progress information to SARS as specified by SARS;
 - 2.3.1.4. minimise the impact of the Incident, correct it, and resume meeting the Service Level as soon as possible once it is corrected; and
 - 2.3.1.5. use Commercially Reasonable Efforts to employ preventive

measures to ensure that the Incident does not recur, including allocating additional Supplier Personnel and resources to the performance of the Deliverables and proposing Changes.

- 2.3.2. Supplier will, on a monthly basis, perform trend analyses on the Service Level performance data. If Supplier or SARS identifies a trend in Service Level performance which reasonably indicates a meaningful risk of a future Service Level Failure, then Supplier will perform a root cause analysis with respect to the trend, report to SARS on its findings and use Commercially Reasonable Efforts (as approved by SARS) to prevent the Service Level Failure from actually occurring.

2.4. Reporting

SARS will issue a report ("**Service Level Report**") at the beginning of each month following the month for which the Service Levels are measured, containing the quantified performance of the Supplier for that month with respect to all the Service Levels as defined in this **Schedule C (Service Levels)**.

2.4.1. Escalating Service Levels

- 2.4.1.1. Service Level Credits for each of the Service Levels detailed in **Appendix C-1 (Service Levels and Credits)** are determined by reference to the time unit in which it is measured (days or hours whichever appropriate) that an event exceeds its Service Level Target in accordance with **Appendix C-1 (Service Levels and Credits)**.

- 2.4.1.2. Each measured event has a maximum allowable elapsed time within which it must be completed ("**Service Level Target**"). If the event is not completed within the Service Level Target then:

- (a) a Service Level Credit to the value specified, either a percentage ("**Service Level Credit Percentage**") of the specified charge will be payable to SARS or a specified fixed amount as indicated in the definition of the Service Level will be payable to SARS; and
- (b) for each further period by which the completion of the event exceeds the Service Level Target the Service Level Credit payable will increase to the value specified, either a percentage ("**Service Level Credit Increment**") of the specified

charge or a specified fixed amount as indicated in the definition of the Service Level will be payable to SARS.

2.4.2. Regardless of whether the method of calculating Service Level Credits described in **Clause 2.4.1** applies, all Service Level Credits will be applied against the first monthly invoice following the month in which the Service Level Failure(s) occurred. Service Level Credits arising in respect of the last month of the Term will be withheld out of the final payment due.

2.5. **Excused Performance**

2.5.1. Where Supplier can establish to the reasonable satisfaction of SARS that:

2.5.1.1. the cause of its failure or the extent to which it failed to achieve a Service Level was a factor or factors outside of the reasonable control of Supplier;

2.5.1.2. Supplier would have achieved such Service Level or would not have failed the Service Level to the same extent that it did but for such factor(s);

2.5.1.3. Supplier used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor(s); and

2.5.1.4. Supplier is without fault in causing such factor(s),

the Service Level Credit will be reduced by the extent to which such factor(s) satisfying all of the conditions 2.5.1 2.5.1.1, 2.5.1.2, 2.5.1.3 and 2.5.1.4 have affected the Service Level Credit.

The Supplier must make applications, in writing, to SARS regarding excused performance. Such applications must be received by SARS within 3 business days of the end of the month in which the event(s) leading to the Service Level failure occurred.

3. **MISCELLANEOUS**

General Sections

Descriptions of each of the Service Levels in the 'General' Sections in the appendices to this **Schedule C (Service Levels)** are intended to summarise each Service Level and will be subject to the full description of the Service Level set out in the remainder of the relevant clause.

APPENDIX C-1: SERVICE LEVELS AND CREDITS

Service Levels, Critical Deliverables and Credits for the Deliverables

1. SERVICE LEVEL CREDITS

1.1. Status of Service Level Credits

The following will apply in respect of Service Level Credits:

- 1.1.1. Service Level Credits ("**Service Level Credits**") are a price adjustment for the relevant period or order as detailed below to reflect the reduced level of Service performed by Supplier. Service Level Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.
- 1.1.2. The payment of a Service Level Credit by Supplier is without prejudice to, and will not limit, any right SARS may have to terminate this Agreement and/or seek damages or other remedies at law resulting from such Service Level Failure and any resulting termination.
- 1.1.3. Notwithstanding the provisions of Clauses 1.1.1 and 1.1.2., any claim for damages resulting from such Service Level Failure, in respect of which a Service Level Credit has already been paid, will be reduced by the amount paid to SARS in respect of that Service Level Credit.

1.2. Entitlement to Service Level Credits

- 1.2.1. Subject to Clause 2.5, for each Service Level Failure occurring during the Term, the Charges for the month following the month in which the Service Level Failure occurred will be reduced by the Service Level Credits calculated in accordance with Clause 1.3.
- 1.2.2. In no event will the total, aggregate amount of Service Level Credits payable by Supplier for a calendar month exceed 15% (fifteen percent) of the total of all amounts invoiced to SARS by Supplier for such month ("At Risk Amount"), provided however that Pass Through Expenses invoiced in any particular month will not

be taken into account in calculating such At Risk Amount.

1.2.3. If Supplier is able to show to SARS's reasonable satisfaction that:

1.2.3.1. a single triggering event directly causes 2 (two) or more Service Level Failures in any month; and

1.2.3.2. but for such event, none of such Service Level Failures would have occurred,

then SARS will be entitled to receive only a single Service Level Credit (selected by SARS) and Service Level Credits will not apply to such other Service Level Failures.

1.3. **Calculation of Service Level Credits**

1.3.1. Each of the Service Levels set out in this **Schedule C (Service Levels)** and its appendices constitutes a single Service Level, even if it has multiple metrics. Supplier must satisfy each metric of those Service Levels with multiple metrics in order to satisfy the Service Level as a whole. If Supplier fails any single metric, Supplier will be deemed to have failed the entire Service Level.

2. **MAINTENANCE**

2.1. **Service Levels**

2.1.1. SARS will designate the Maintenance Window of the SARS Sites as of the Commencement Date in the RFQ. SARS may change such designations at SARS' sole discretion upon no less than 30 (thirty) days prior written notice to Supplier.

2.1.2. Supplier must schedule a Maintenance Event for a SARS Site in accordance with the site's designated Maintenance Window, at least 30 days in advance base on the OEM guidelines with regards to the NISD Solution maintenance requirement (i.e. number of scans performed)

2.1.3. Supplier may due to unforeseen circumstances and then only upon SARS' written approval obtained no less than 2 (two) Business Days in advance of the scheduled date of a Scheduled Maintenance Event, vary such Maintenance within the parameters contained in Table C-1 below.

2.1.4. SARS may upon no less than 2 (two) Business Days advance written notice to Supplier, vary a Scheduled Maintenance Event.

- 2.1.5. Changes to Scheduled Maintenance Events do not entitle Supplier to a price adjustment.

Table 2: Adherence to Preventative Maintenance Schedules

Activity frequency	Monthly
Variance from Service Level Target	3 (three) days

2.2. Maintenance Service Level Credit

In the event that a Checklist for a SARS Site has not been completed, signed off and submitted to SARS in accordance with **Clause 5.3 of Schedule B (SOW)** (as the scheduled dates may be varied in terms of this **Clause 2.2**), a Service Level Credit will become payable by the Supplier to SARS. This Service Level Credit will be payable for each SARS Site and for every day that the completion of the Checklist remains outstanding.

Maintenance Service Level Credit Rate
R 500.00 (five hundred rand only) including VAT per day that the Maintenance due to be performed remains outstanding.

3. BREAK-FIX

3.1. Support Level

3.1.1. SARS will designate the Support Level of the SARS Sites as of the Commencement Date in the RFQ. SARS may change such designations at SARS' sole discretion upon no less than 30 (thirty) days prior written notice to Supplier.

3.1.2. A Problem/Incident will be deemed to begin at the time that it is first reported to, or otherwise discovered by Supplier. Supplier shall ensure that all Incidents and/or Problems are logged on Remedy as soon as they become aware of such Incidents and/or Problems.

3.1.3. **Time to Respond:** Supplier shall respond to a Problem/Incident within the period set forth in Table C-2 of **Appendix C-1 (Service Levels and Credits)** from time that it begins. The Supplier will be deemed to have

responded to the Problem/Incident when a member of the Supplier staff, qualified to attend to and Resolve the Incident, has in person reported to the affected SARS Site and made contact with the relevant SARS technical staff or the SARS member of staff reporting the Problem/Incident.

- 3.1.4. **Time to Resolve:** Supplier shall resolve a Problem/Incident within the period set forth in Table C-2 of **Appendix C-1 (Service Levels and Credits)** from time that it begins.

Table 2: Support Levels

Support Level	Service Level Target	
	Time to Respond	Time to Resolve
Bronze	30 Minutes	8 Hours
Silver	30 Minutes	4 Hours
Gold	30 Minutes	2 Hours

3.2. Service Coverage

Each SARS Site also has one of two service coverage periods (each, a “**Service Coverage Period**”) designated as the period of time during which Service Levels are to be measured against Supplier’s provision of the Services. Each item of NISD Solution contained at the SARS Site shall have the associated Service Coverage Period of that SARS Site. SARS has designated the Service Coverage Period of each SARS Site as of the Commencement Date. If no Service Coverage Period is specified for any SARS Site, its Service Coverage Period shall be deemed to be Standard. SARS may change such designations at SARS’ sole discretion upon no less than 30 (thirty) days prior written notice to Supplier. The Service Coverage Periods are set forth below.

Service Coverage Period	Time to Respond
Standard	06h00 to 22h00 (7 days a week)
Premium	24 X 7 x 365

3.3. Break-Fix Service Level Credit

Break-Fix Service Level Credit Rate
A sliding scale of 5% of the monthly invoice for each failure of Service Level.

4. SERVICE LEVEL: GENERAL OBLIGATIONS

4.1. General

The General Obligations Service Level measures the Supplier compliance to all Supplier obligations in this Agreement. The Supplier is expected to adhere to all obligations and deliverables contracted for in the Agreement and upon the non-performance of any obligation or non-delivery of a specified deliverable within the timeframes specified in the Agreement the General Obligations Service Level will be missed if:

- 4.1.1. SARS has given notice to the Supplier, by delivering a written notice to the Supplier Service Delivery Manager of the fact that an obligation in the Agreement has not been performed; and
- 4.1.2. the Supplier fails to perform the obligation within 14 days of SARS giving such notice to the Supplier.

The provisions of this General Obligations Service Level and/or payment by the Supplier of Service Level Credits with regard to the General Obligations Service Level does not in any way limit any right or recourse SARS may have to enforce the performance of any obligation in this Agreement nor limit SARS's right to seek remedies for the non-performance of any obligation in this Agreement.

The payment of a Service Level Credit by the Supplier in no way releases the Supplier from the future timeous performance of any obligation in this Agreement.

General Obligations Service Level Credit Rates	
Service Level	Service Level Credit
For each obligation contained in the Agreement that is not performed within 14 days of the notice by SARS to the Supplier Service Delivery Manager of the Supplier's failure to perform any obligation in the	R 5,000 (Five Thousand Rand)

General Obligations Service Level Credit Rates	
Service Level	Service Level Credit
Agreement timeously.	
Service Level Credit Increment	R 5,000 (Five Thousand Rand) for every 14 (fourteen) days for which the obligation contained in Agreement is not performed after notice by SARS has been given to the Supplier Account Executive or Service Delivery Manager of the Supplier's failure to perform an obligation.

4.2. Example

The Supplier fails to deliver the Asset Management Services (as detailed in **Clause 10 of Schedule B (SOW)**). SARS notifies the Supplier and the Supplier rectifies the service 30 days after being notified. Then General Obligations Service Level Service Level Credit will be calculated as R10,000. (R5,000 for not delivering the report within 14 days of the notification and another R5,000 for not delivering the report within a further 14 days after that.)

SCHEDULE D: PRICING, INVOICING AND PAYMENTS

Appendices and Attachments

Appendix D-1	Implementation Charges
Appendix D-2	Procurement, Maintenance and Break-fix Charges
Appendix D-3	Material, Personnel and Travel Rates
Appendix D-4	Pricing Adjustment
Appendix D-5	Pricing Catalogue

SCHEDULE D: PRICING, INVOICING AND PAYMENTS

1. GENERAL

1.1. General

- 1.1.1. This **Schedule D (Pricing, Invoicing and Payments)** describes how the Charges payable by SARS to Supplier pursuant to this Agreement must be calculated and invoiced.
- 1.1.2. The Charges for Deliverables in respect of a Work Order will commence on the Commencement Date as stated in such Work Order.
- 1.1.3. The Charges payable by SARS are set forth in the Work Orders.
- 1.1.4. The prices set out in the Appendices to this **Schedule D (Pricing, Invoicing and Payments)** (with the relevant CPI, Forex and AA-travel adjustments applied in accordance with clause 10.3), form an upper bound for the pricing submitted by the Supplier in response to RFQs that may be issued by SARS from time to time.
- 1.1.5. The Charges are the only amounts payable by SARS to Supplier for the Deliverables or otherwise in connection with this Agreement and no other or separate charges, expenses, costs or other amounts incurred by Supplier will be chargeable to or payable by SARS to Supplier.
- 1.1.6. Unless specifically provided otherwise in this Agreement, the Charges will include all incidental expenses (e.g. travel and lodging) that Supplier incurs in performing the Deliverables. Charges for Pass Through Expenses (as contemplated in Clause 8 below) must similarly include all incidental expenses.
- 1.1.7. There will be no changes to the Charges except to the extent:
- 1.1.7.1. required under Clause **1.4** below;
- [Note to the Bidder: This reference is to Supplier's obligation to reduce costs]**
- 1.1.7.2. permitted under Clause 4 below;
- [Note to the Bidder: This reference is to Calculation of Charges]**
- 1.1.7.3. permitted under Clause **10** below;

[Note to the Bidder: This reference is to Inflationary adjustments]

1.1.7.4. required under Clause 11 below;

[Note to the Bidder: This reference is to Extraordinary Events]

1.1.7.5. required under Clause **12** below;

[Note to the Bidder: This reference is to changes which result from SARS's partial termination of the Agreement as contemplated in Clauses 26.1 and 26.3 of the Main Agreement]

1.1.7.6. required under Clause 14 below;

[Note to the Bidder: This reference is to Service Level Credits];

or

1.1.7.7. permitted by SARS under Clause 27.5.4.3 of the **Main Agreement**

[Note to the Bidder: This reference is to changes to law.]

1.1.7.8. required under Clause 24 of the **Main Agreement**.

[Note to the Bidder: This reference is to Benchmarking]

1.1.8. Supplier will not be entitled to unilaterally: (i) impose or seek payment of any amounts or charges under the Agreement other than the Charges; (ii) establish any new types of charges under the Agreement; and/or (iii) modify any of the Charges under the Agreement.

1.1.9. References to: (i) "days" will be to calendar days; (ii) "months" will be to calendar months; and (iii) "quarters" will be to calendar quarters, unless a more specific reference is given. References to "years" will be to Contract Years, unless a more specific reference is given.

1.2. **Currency**

The Charges must be stated in South African Rand and will be invoiced and paid in South African Rand.

1.3. **Taxes**

1.3.1. All Charges and Unit Rates are VAT inclusive and include all applicable taxes, duties and levies.

- 1.3.2. Supplier will comply with all Applicable Laws relating to tax and tax invoices. In addition, Supplier will comply with all SARS's requirements for invoicing taxes.
- 1.3.3. Each Party will be responsible for: any real estate taxes and real estate transfer taxes on real estate it acquires, owns or leases; for any wage taxes levied on wages for employees employed by the relevant Party in connection with the provision or the receipt of the Deliverables and for taxes based on its net or gross income, in particular corporate income tax and trade tax. SARS will not be responsible for any allocation of any of the aforementioned taxes that are levied on the Supplier.
- 1.3.4. Except for value added taxes, the general tax risk allocation principle as set out in Clause 1.3.3 will apply *mutatis mutandis* with respect to all taxes that are not addressed in Clause 1.3.4 in particular, including taxes levied outside South Africa.
- 1.3.5. The Supplier will be responsible for any taxes levied by a regulator or other government authority that are assessed on goods and services used or consumed by the Supplier in providing the Deliverables. SARS will not be responsible for any allocation of taxes that are levied on goods and services used or consumed by the Supplier in providing the Deliverables.

1.4. **Cost Reduction**

- 1.4.1. In consultation with SARS, Supplier will continually investigate methods to reduce the Charges.
- 1.4.2. Without limiting the generality of its obligations under Clause 1.4.1 Supplier will:
 - 1.4.2.1. use Commercially Reasonable Efforts to identify methodologies, processes, solutions and technologies that SARS or the Supplier may employ to reduce Incidents and Problems; and
 - 1.4.2.2. model the effects of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and
 - 1.4.2.3. periodically report (but no less frequently than annually) on such efforts and make recommendations to SARS regarding

steps SARS, Supplier or both may take to reduce the Charges.

1.5. **Cost Review Meetings**

1.5.1. Within 60 (sixty) days prior to the Adjustment Date defined in Clause 10.1 below, and at such other times as SARS may reasonably request, the Parties will meet to:

1.5.1.1. formally review the Charges;

1.5.1.2. formally review the extent to which Supplier is achieving all efficiencies in its performance of the Deliverables to the extent reasonably possible; and

1.5.1.3. consider whether the Agreement is achieving its objective of providing SARS the Deliverables in accordance with the Performance Standards at the lowest possible prices.

each such meeting being referred to as a "**Cost Review Meeting**".

1.5.2. At each Cost Review Meeting, Supplier will be prepared to discuss, and will discuss: (i) proposals arising from Supplier's report under Clause 1.4 above; (ii) any specific issues that SARS wishes to discuss; and/or (iii) any other pertinent matter.

1.5.3. During Cost Review Meetings, Supplier, having analysed the Charges in detail in advance of such review, will propose, and the Parties will discuss and consider, changes that can reasonably be expected to result in a reduction of the cost of the Deliverables to SARS. Such changes may relate to, for example: SARS's business processes; the technology used to provide and deliver, or to receive and use, the Deliverables; Supplier Personnel; Supplier's processes; and/or the selection and use of Subcontractors and Third Party Suppliers.

1.5.4. Supplier will schedule Cost Review Meetings by giving SARS at least 45 (forty five) days prior notice. Supplier will use Commercially Reasonable Efforts to co-ordinate with SARS before scheduling the review. The foregoing notwithstanding, SARS will be entitled to schedule a Cost Review Meeting at any time that SARS deems fit. A Cost Review Meeting will run for such period of time as is reasonably required by SARS. All Cost Review Meetings will take place at a venue designated by SARS.

1.5.5. In order to prepare for and participate in any Cost Review Meeting, Supplier

will make available such resources as are reasonably required: (i) to analyse SARS consumption and the cost of the Deliverables to SARS; (ii) to perform all of the tasks and activities described in this Clause 1.5 associated with such Cost Review Meeting; and (iii) otherwise to maximise the likelihood that such Cost Review Meetings will result in a reduction in the Charges and the cost of the Deliverables to SARS. The Parties acknowledge and agree that the application of this provision will not result in any changes to the Agreement, Deliverables or Service Levels unless set forth in a formal amendment to the Agreement pursuant to Clause 27.4.3 of the **Main Agreement**.

- 1.5.6. Without limiting the generality of the foregoing, at least 5 (five) Business Days prior to the commencement of each Cost Review Meeting, Supplier will provide SARS with a draft description of any proposals Supplier intends to make during the Cost Review Meeting, including per Work Order any charges or Charge adjustments proposed by Supplier in order to implement any such proposals, or resulting from their implementation, as well as projections of any changes to the costs of the Deliverables to SARS resulting from such proposal.
- 1.5.7. If SARS decides (at its sole discretion) to implement any such proposals, Supplier will promptly implement them or (at SARS request) assist SARS to implement them, as applicable.
- 1.5.8. Supplier acknowledges and agrees that the process described in this Clause 1.5 is critical to enable the Parties to achieve their price/performance objectives during the Term.

1.6. **Travel and Incidental Charges**

Should Supplier be required to travel at SARS's insistence other than as set out in this Agreement, such travel will be Charged on a Pass Through Expense Basis and will be limited to travel, subsistence and accommodation which expenses will be pre-approved in writing (including by e-mail) by SARS.

2. **CHARGES**

2.1. **Charges – Specific Charges Requirements**

- 2.1.1. Except as expressly provided otherwise in this Agreement, the only amounts payable by SARS for any Deliverables will be the Charges and

applicable taxes as and to the extent Supplier generally charges them to its customers of similar services, all provided that such amount is specified in a Work Order to this Agreement signed by both Parties.

- 2.1.2. Supplier will waive expedite charges for any Deliverables ordered under the Agreement. There will be no limit on the number of expedite requests.
- 2.1.3. SARS will have the right to reschedule or delay installation due dates for service elements or equipment without incurring any increased or separate charges.
- 2.1.4. Supplier will not charge SARS for any Third Party service components provided by the Supplier for which costs are incurred after expiry of SARS's notice of cancellation of a service component to Supplier.
- 2.1.5. Supplier represents and warrants that the Unit Rates and any other rates or Charges set forth in Work Orders constitute the totality of all of the Charges (all costs to SARS are included in these rates) for all of the Deliverables. SARS will not be charged any amounts that are not set forth in Work Orders for any of the Deliverables.

2.2. **No Minimums**

No minimum charges are applicable in relation to this Agreement. If there is an inconsistency between the Agreement and Supplier's tariffs or other regulatory filings which precludes SARS from receiving all of the rights and benefits provided for by the Agreement, then Supplier will amend the tariff or otherwise resolve the inconsistency to provide such rights or benefits to SARS. If that is not possible, SARS will have the right to terminate upon 60 (sixty) days prior written notice (given any time within 90 (ninety) days after Supplier notifies SARS in writing of any such discrepancy) any or all of the affected Deliverables with no liability (other than paying for Deliverables properly provided prior to the effective date of such termination).

3. **INVOICING AND PAYMENT**

3.1. **Invoicing**

- 3.1.1. Supplier will invoice SARS monthly for the Charges on a milestone basis (as set out in the relevant Work Order), in arrears on or before the 5th (fifth) Business Day of the month following the month in which the Deliverables

were supplied.

- 3.1.2. Each invoice will contain or have attached such information, and be in such form and on such media as SARS may reasonably request including a completed and signed off input asset sheet in accordance with SARS procedures.
- 3.1.3. Subject to Clause **3.1.4** below, invoiced Charges will be reduced: (i) by 1 (one) percent if SARS does not receive the invoice with such information and in such form and on such media as SARS may reasonably request by the 20th (twentieth) day of the month in which Supplier is obligated to deliver such invoice; and (ii) by an additional 1 (one) percent for each month thereafter.
- 3.1.4. Regardless of anything else in this Agreement, SARS will not be obliged to pay any amounts that are invoiced more than 120 (one hundred and twenty) days after the Deliverables were supplied.
- 3.1.5. Each invoice will consist of or have attached:
 - 3.1.5.1. a statement of the total amount due. In addition, at SARS's request, Supplier will provide to SARS the calculation of the Charges under the algorithms of this **Schedule D (Pricing, Invoicing and Payments)** or as set out in the relevant Work Order;
 - 3.1.5.2. the Supplier's estimate of the Charges that were approved by SARS for any work performed by Supplier Personnel on a Time and Materials Basis prior to commencement of such work;
 - 3.1.5.3. if so requested by SARS, copies of daily time cards signed by an authorised SARS representative and the reference number generated by the SARS service desk for any work performed by Supplier Personnel on a Time and Materials Basis;
 - 3.1.5.4. amount due per site per device
 - 3.1.5.5. site use for mobile device billing purpose for all mobile, containerised, trailer mounted and vehicle mounted devices
 - 3.1.5.6. a valid SARS purchase order number; and
 - 3.1.5.7. any additional details and information reasonably specified by SARS, in the format reasonably specified by SARS from time to

time.

- 3.1.6. Supplier will send the invoices to the department designated by SARS from time to time and provide copies of the invoices to other SARS contacts as may be designated by SARS from time to time.
- 3.1.7. Supplier will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS in accordance with International Financial Reporting Standards (IFRS).
- 3.1.8. Within 2 (two) Business Days after SARS's request, Supplier must provide SARS with any other documentation or information reasonably required in order to verify: (i) the accuracy of the Charges on an invoice; and (ii) an invoice's compliance with the requirements of this Agreement.
- 3.1.9. In the event that the documentation requested by SARS as per Clause **3.1.8** above has not been supplied to SARS within the time period specified in Clause **3.1.8**, Supplier must issue a credit note to SARS for the related invoice within 5 (five) Business Days from the receipt of the request for additional information as per Clause **3.1.8**.
- 3.1.10. Supplier will verify that each invoice is complete, accurate, that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) and that invoice rates are as stated in the relevant Work Orders.
- 3.1.11. Supplier will, at no additional Charge, provide appropriately skilled Supplier Personnel as SARS's point of contact for answering invoicing queries. Such individuals will respond promptly to any billing queries.
- 3.1.12. At no additional charge to SARS, Supplier will review all of its invoices submitted to SARS during the first 3 (three) months of a Work Order term and certify in writing that each invoice was calculated correctly, including using the correct Charges and Unit Rates set out in the Agreement and only invoicing for Deliverables actually being provided. Supplier will provide this certification within 15 (fifteen) days after it submits each such invoice. If Supplier discovers discrepancies in an invoice submitted to SARS within the first 3 (three) months pursuant to this procedure, it will reissue such invoice and such invoice will be deemed to have been 'received' (for purposes of calculating the payment due date) by SARS on the date that SARS receives the corrected invoice.

- 3.1.13. Supplier will, at no additional charge to SARS and within 60 (sixty) days following the end of each subsequent calendar quarter, review and validate each invoice that it issued to SARS during such quarter. Supplier will provide SARS with a reconciliation report listing the results including exception reports, errors and a complete reconciliation of invoices to actual required invoice amounts. Supplier will promptly credit any amounts that were improperly invoiced and may issue a supplemental invoice with respect to amounts that Supplier discovers could have been invoiced but were not invoiced.
- 3.1.14. Supplier may round invoiced amounts only once per invoice, at the highest summary (or aggregate) level.
- 3.1.15. Supplier will provide SARS with the option of implementing, at any time during the Term, invoicing and payment in a mutually agreed electronic, digital, EDI or Web-based format, within 90 (ninety) days of SARS's request at no additional cost to SARS. In addition, Supplier will provide hard copies of invoices where required under Applicable Law and in the format, and with the information and detail, required by Applicable Law.
- 3.1.16. Supplier will invoice all Charges within 60 (sixty) days after providing the Deliverables giving rise to such Charges.

3.2. **Payment**

- 3.2.1. SARS will pay undisputed Charges to Supplier within 30 (thirty) days following receipt of each invoice provided such invoice is accurate and meets the requirements of this Agreement.
- 3.2.2. SARS may set off any amounts due by Supplier pursuant to this Agreement against any Charges payable by SARS pursuant to this Agreement. If the amounts payable by Supplier to SARS exceed the Charges payable by SARS to Supplier pursuant to an outstanding invoice under all the Work Orders then, at SARS's option, Supplier will either: (i) issue a credit note for the net amount which SARS may set off against any other invoices rendered by Supplier; or (ii) pay the amount to SARS.

3.3. **Disputed Charges and Invoicing Errors**

- 3.3.1. SARS may withhold payment of Charges that SARS disputes in good faith (or, if the disputed Charges have already been paid, SARS may withhold

an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:

3.3.1.1. SARS will promptly notify Supplier that it is disputing such Charges; and

3.3.1.2. the Parties will promptly address such dispute in accordance with Clause **25** of the **Main Agreement**.

3.3.2. If the dispute relates to (or, in the case of disputed Charges that have already been paid, is equal to) only certain of the Charges included on an invoice, then SARS will pay the undisputed amounts in accordance with Clause 3.2.1 above.

3.4. If an invoice is identified by either Party as incorrect, then Supplier must submit a Credit Note to SARS within 3 (three) Business Days. A new corrected invoice can be submitted once the accuracy has been verified by Supplier's Finance Manager. If the amount has been paid; Supplier will refund any overpayments with interest (calculated at the Agreement Interest Rate) calculated from the date of SARS's payment to the date of the refund both dates inclusive. SARS will not be responsible for paying interest on undercharged amounts, if any.

4. CALCULATION OF CHARGES

4.1. Charges must include all the Supplier operational related costs (e.g. printing faxing, telephone photocopy, office space etc.)

4.2. There will be no additional charges to SARS apart from the Charges.

4.3. For the avoidance of doubt, charges for the performance of Asset, Incident, Problem and Operational Change Management Services will be included in these Charges.

5. CHARGES ON A MONTHLY BASIS

Where a Charge is designated as a Monthly charge for a Deliverable, such Charge will be the only charge made in respect of such Deliverable and will be charged at monthly intervals. The only change to the amounts paid in respect of Deliverables for which a monthly charge is levied will be made on the Adjustment Date and in accordance with Clause 10.

6. CHARGES ON A TIME AND MATERIALS BASIS

6.1. General

- 6.1.1. Charges in respect of Material, Personnel and Travel in a Work Order may not exceed the Material, Personnel and Travel Rates as set out in Appendix D-3 of this **Schedule D (Pricing, Invoicing and Payments)**.
- 6.1.2. Personnel Rates (by skill classification) are set forth in **Appendix D-3 (Material, Personnel and Travel Rates)** on an hourly, daily, monthly and quarterly basis. If there is no Personnel Rate for a skill classification required for the performance of the work to be performed on a Time and Materials Basis, Supplier's rate for such skill set will be the rate for the next closest, lowest skill set specified in **Appendix D-3 (Material, Personnel and Travel Rates)**.
- 6.1.3. Charges for travel will be calculated by multiplication of Site Distance with the Distance Rates are set forth in **Appendix D-3 (Material, Personnel and Travel Rates)** on a Business Hour or After Hours basis. If there is no Travel Distance specified for a site at which Deliverables are required on a Time and Material basis the Site Distance for the site will be specified by the Supplier in its response to an RFQ issued by SARS to Supplier.

6.2. Chargeable Time

- 6.2.1. The Supplier Personnel will accurately complete daily time sheets on a concurrent basis showing the actual time spent performing the work that is chargeable on a Time and Materials Basis. Such time sheets will be verified and signed by an authorised SARS representative before submission of the associated Time and Material Based Charges.
- 6.2.2. All work to be performed on a Time and Materials Basis will be performed by Supplier in a productive and efficient manner (including using Supplier Personnel charged at the lowest appropriate rate).
- 6.2.3. SARS will not be charged (and will not be liable to pay) for any time spent by Supplier Personnel in remedying Supplier errors.

7. CHANGES TO SARS STANDARDS

If after the Effective Date, SARS materially changes any of the standards under Clause 4.4 of **Schedule E (Governance)** and solely as a result of such change

Supplier is unable to avoid a material change to the Deliverables, then such change to the Deliverables will be addressed as a Restricted Solution.

8. PASS THROUGH EXPENSES

8.1. Any Pass Through Expenses will be subject to prior approval by SARS and will be charged to SARS on a Pass Through Expense Basis. If SARS so requires, the Supplier must obtain 3 (three) quotations for items to be procured on a Pass Through Expense basis.

8.2. Supplier will use Commercially Reasonable Efforts to minimise the cost of goods and Deliverables provided to SARS on a Pass Through Expense Basis. SARS, at its sole discretion, may audit the price charged by Supplier for item(s) procured by Supplier for SARS on a Pass Through Basis. If the price charged by Supplier is more than 10% (ten percent) greater than the market related price, as determined by SARS, for the same item then SARS will be entitled to demand a full refund of the price charged by the Supplier for the item. In determining the market related price for the item(s), SARS should show the general availability of such item(s) at the market-related price taking into account the geographic area, quantities, urgency, quality and other circumstances under which the Supplier had procured such item(s).

8.3. Materials procured on a Pass Through Expense Basis will be acquired in SARS's name and SARS will have all right, title and interest in such materials.

8.4. Supplier must procure any goods or services related to the Deliverables, on behalf of SARS on a Pass Through Expense Basis, should SARS so require.

8.5. Charges for Parts and Consumables

8.5.1. Supplier will only be entitled to charge for Parts and consumables in the fulfilment of break-fix obligations where SARS has incurred liability for the associated Incident or Problem. Liability will only be incurred by SARS if the Supplier can show to SARS to SARS's reasonable satisfaction, that the Incident or Problem has been caused by a wilful or negligent act by SARS's personnel or if the Incident or Problem is a result of a damage causing event of nature or of a Third Party.

8.5.2. The Supplier must, after performing diagnosis of an Incident and Problem but prior to initiating the repair activities, notify SARS of the potential of

SARS incurring liability for the Incident or Problem and provide a quote for the charges for such Parts and consumables necessary for the repair. In the absence of SARS receiving such notification, the Incident or Problem will be deemed to have resulted from normal wear and tear and the Supplier will be liable to perform break-fix activities and the cost of Parts and consumables must be provided as part of the monthly break-fix charge and no additional charge will be incurred by SARS.

8.5.3. In the event the Supplier has notified SARS, as contemplated in Clause 8.5.2, of the potential of SARS incurring liability for the Break-fix activity, then:

8.5.3.1. The Supplier must perform all activities to restore the NISD Solution's availability that can be performed without the potential of SARS incurring liability for Parts and consumables.

8.5.3.2. On authorisation from SARS, the Supplier must proceed to perform all Break-fix activities, including the provision of Parts and consumables to restore the NISD Solution's availability.

8.5.4. Within 5 (five) business days, the Supplier must meet with SARS to determine the root cause of the Incident or Problem and to determine the liability for the Charges for Parts and consumables. In the event the Supplier can show SARS, to its reasonable satisfaction, that SARS has incurred liability for the Parts and/or consumables, the Supplier may charge SARS for such Parts and consumables but in no event greater than the amount quoted to SARS after the initial diagnosis. The Supplier may only charge for such Parts and / or consumables on a Pass Through Expenses Basis.

8.5.5. SARS may audit Supplier's compliance with the provisions of this Clause 8.5 in accordance with Clause 23 of the Main Agreement and upon SARS's request the Supplier must produce the original supporting documentation to SARS.

8.6. **Charges for Third Party solution elements**

In the event that Supplier's solution proposed, in a response to a RFQ issued by SARS, contains elements supplied by a Third Party the Supplier may charge a mark-up on the Third Party's price for such elements that must be equal to or less than *[mark-up percent]%* (*[mark-up percent in words]*).**[Note to Bidder: Mark-up**

percentage will be populated from SARS RFP 22-2023 Pricing Response Template - Category x]

SARS may audit Supplier's compliance with the provisions of this **Clause 8.6** in accordance with **Clause 23** of the **Main Agreement** and upon SARS's request the Supplier must produce the original supporting documentation to SARS.

9. **DISENGAGEMENT ASSISTANCE**

Supplier may charge for Disengagement Assistance only in accordance with the provisions of **Schedule F (Disengagement Assistance)**.

10. **PRICE ADJUSTMENTS AND ADJUSTMENT DATES**

10.1. The Charges will be adjusted on the first Adjustment Date set out hereinafter and on each anniversary thereof ("**Adjustment Date**") to take account of adjustments in Supplier's labour costs, travel and the costs of consumables, but only to the extent set forth in this **Clause 10**.

10.2. Charges in respect of a Work Order will be adjusted as per **Clause 10.1** on the first Adjustment Date following the Commencement Date of the Work Order and on each anniversary of that Adjustment Date.

10.3. **Adjustment of CPI, Forex-based and AA travel-based Charges**

Percentages in **Appendix D-4 (Pricing Adjustments)** will be used as a guideline in the calculation of the adjustments of CPI, Forex-based and AA travel-based Charges effective on the Adjustment Date and will be calculated as follows:

$$\text{Adjusted price} = [(1 + (A*B) + (D*E) + (F*G))*C]$$

Where: A = the actual change in the Rand/US Dollar exchange rate (defined below) at the Adjustment Date calculated as follows:

$$A = (F1 - F2) / (F2)$$

Where: F1 is the ruling Rand / US Dollar Exchange Rate on the Adjustment Date. (For example if the Adjustment Date is 1 April 2024, F1 will be the ruling Rand / US Dollar Exchange Rate on 1 April 2024).

F2 is ruling Rand / US Dollar Exchange Rate (F1) used at the previous Adjustment Date. (Where this is to be used in the calculation for the Adjustment Date of 1 April 2024, F2 will be the ruling AA travel index on 1

April 2024).

The ruling Rand / US Dollar Exchange Rate is the Rand price of the US Dollar on the date in question as published by Standard Bank South Africa (“**SBSA**”) (or its equivalent successor in title) Should SBSA cease publishing Rand price of the US Dollar or substantially change the content or format thereof SARS will by notice to Supplier substitute another appropriate equivalent measure of the Rand price of the US Dollar.

B = the Forex Sensitivity Factor. Forex Sensitivity Factor is set forth in **Appendix D-4 (Pricing Adjustments)**.

D = the actual inflation at the Adjustment Date calculated as follows:

$$D=(CPI1 - CPI2)/(CPI2)$$

Where : CPI1 is the consumer price index for the month of the Adjustment Date. (For example if the Adjustment Date is 1 April 2024, CPI1 will be that of April 2024).

CPI2 is the consumer price index (CPI1) used at the previous Adjustment Date. (Where this is to be used in the calculation for the Adjustment Date of 1 April 2014, CPI2 will be the consumer price index for April 2024).

The consumer price index is the consumer price index (**CPI**) for the month in question as published by Statistics South Africa (“**SSA**”) (or its equivalent successor in title) Should SSA cease publishing the CPI or substantially change the content or format thereof SARS will by notice to Supplier substitute another appropriate equivalent measure of CPI.

E = the Inflation Sensitivity Factor. The Inflation Sensitivity Factor is set forth in **Appendix D-4 (Pricing Adjustments)**.

: F= the actual increase in travel costs (defined below) at the Adjustment Date calculated as follows:

$$A=(AA1 - AA2)/(AA2)$$

Where: AA1 is the ruling AA Travel Index on the Adjustment Date. (For example if the Adjustment Date is 1 April 2024, AA1 will be the ruling AA Travel Index on 1 April 2024).

AA2 is ruling AA Travel Index (AA1) used at the previous Adjustment Date. (Where this is to be used in the calculation for the Adjustment Date of 1 April 2024, AA2 will be the ruling AA Travel Index on 1 April 2024).

The ruling AA Travel Index is the ruling Total Vehicle Operating Cost

calculated on a 1800cc petrol vehicle of cost R125,000 that travels an annual distance of 40,000km travel index on the date in question as published by the Automobile Association of South Africa ("AA") (or its equivalent successor in title) Should the AA cease publishing the AA travel index or substantially change the content or format thereof SARS will by notice to Supplier substitute another appropriate equivalent measure of the AA Travel Index.

G = the AA Travel Sensitivity Factor. The AA Travel Sensitivity Factor is set forth in **Appendix D-4 (Pricing Adjustments)**.

C = Charges set out in Work Orders in the previous Contract Year.

11. EXTRAORDINARY EVENTS

11.1. In the case of an Extraordinary Event (defined in Clause 11.2 below), Supplier's Charges will, on prior approval by SARS, be equitably adjusted.

11.2. "Extraordinary Event" means:

11.2.1. a governmental reorganisation;

11.2.2. a change in law; or

11.2.3. the addition, reduction, or other elimination of a significant 'Line of Operations' or other similar organisational change to SARS; and

which Supplier is able to show, to SARS's reasonable satisfaction, has a material impact on Supplier's cost structure in respect of the Deliverables.

12. TERMINATION CHARGES

SARS will under no circumstances be liable for any termination charges under this Agreement.

13. CESSATION UPON PARTIAL TERMINATION OR REDUCTION IN REQUIREMENTS

In the event that SARS exercises its rights pursuant to the **Main Agreement** to:

13.1. provide itself, or retain Third Parties to provide, any or all of the Deliverables (Clauses 4.11.3 and 22.3.2.1 of the **Main Agreement**); or

13.2. partially terminate the Deliverables (Clauses 22.3.2.2 and 26 of the **Main**

Agreement);

then any Charges that relate to the Deliverables that are no longer being performed will no longer be chargeable to or payable by SARS.

14. SERVICE LEVEL CREDITS

The Charges will be adjusted by the application of Service Level Credits.

15. PAYMENT SCHEDULE

Payment for the implementation of a NISD Solution will be made according to the following payment schedule (the percentages indicated below are the proportion of the total price for the NISD Solution)

- 15.1. 40% upon delivery of all hardware and software components of the NISD Solution to the site intended for installation and commissioning
- 15.2. 40% upon sign off of the Acceptance Criteria
- 15.3. 20% upon completion of a period of at least 30 (thirty) continuous days in accordance with its Documentation and the applicable Work Order or Change Order, without an outage (other than an outage attributable solely to user error) and without exhibiting a material defect or deficiency

APPENDIX D-1: IMPLEMENTATION CHARGES

[Note to the Bidder: this will be populated with the relevant completed RFP pricing templates, tables and amounts upon finalisation of the contract.]

DRAFT

APPENDIX D-2: ACQUISITION, MAINTENANCE AND BREAK-FIX CHARGES

[Note to the Bidder: this will be populated with the completed RFP pricing templates, tables and amounts upon finalisation of the contract.]

DRAFT

APPENDIX D-3: MATERIAL, PERSONNEL AND TRAVEL RATES

[Note to the Bidder: this will be populated with the relevant sections of the completed RFP pricing templates, tables and amounts upon finalisation of the contract.]

DRAFT

APPENDIX D-4: PRICING ADJUSTMENTS

[Note to the Bidder: this will be populated with the relevant sections of the completed RFP pricing templates, tables and amounts upon finalisation of the contract.]

DRAFT

APPENDIX D-5: PRICING CATALOGUE

[Note to the Bidder: this will be populated with the relevant completed RFP technical templates, tables and amounts upon finalisation of the contract.]

DRAFT

SCHEDULE E: GOVERNANCE

Appendices and Attachments

Appendix E-1	Key Supplier Positions
Appendix E-2	SARS PPS&G
Appendix E-3	Form of a Change Order
Appendix E-4	Form of a Work Order
Appendix E-5	Form of Charge Adjustment Acceptance

SCHEDULE E: GOVERNANCE

1. INTRODUCTION

This **Schedule E (Governance)** details the terms which are relevant to and which will govern Supplier's management of its performance of the Deliverables and SARS's management of Supplier.

2. CHANGE

2.1. Technology Refresh

Supplier will ensure that the Software and hardware it uses and/or provides in connection with its performance of the Deliverables, including measurement, management and monitoring Tools:

- 2.1.1. are current and proven;
- 2.1.2. are supported by the applicable maintenance provider's maintenance agreement;
- 2.1.3. support the Maintenance and Break-fix of in scope NISD Solution standards;
- 2.1.4. support Supplier's obligation to perform the Deliverables in terms of its obligations under this Agreement (including the Performance Standards); and
- 2.1.5. where applicable to the Deliverables, are compatible with the SARS Software and hardware.

2.2. Notwithstanding the foregoing, Supplier will have sole responsibility for the cost of purchasing and replacing its own assets as required for it to meet its obligation to perform the Deliverables in terms of its obligations under this Agreement (including the Performance Standards).

3. REVIEWS

3.1. Innovation

Without limiting the generality of Supplier's other obligations under this Agreement,

Supplier will on an annual basis:

- 3.1.1. seek to: (i) identify innovative ways to reduce SARS internal and external costs associated with the Deliverables, including the Charges; and (ii) increase functionality of the Deliverables, in each case evaluating SARS's use of technology and considering whether changes to such use or to technology would reduce SARS's internal and external costs or increase the business value provided by the NISD Solution;
- 3.1.2. summarise the results of Supplier's efforts under Clause 3.1.1 in the form of proposals, including recommendations regarding ways to achieve the goals articulated in Clause 3.1.1;
- 3.1.3. analyse and evaluate the proposals referred to in Clause 3.1.2 and any similar proposals reasonably made by SARS; and
- 3.1.4. implement such proposals with SARS's approval.

3.2. **Annual Review of Deliverables and Service Levels**

The Parties will perform an annual review of the Deliverables and the Service Levels to determine whether: (i) Supplier is meeting its obligations in Clause 1.2 of **Schedule C (Service Levels)** to improve its level of Service throughout the Term; and (ii) the specific Service Levels required of Supplier should be more favourable to SARS than those set out in **Schedule C (Service Levels)**. Upon completion of this review, Supplier will propose all potential improvements to the Service Levels for SARS's review and approval.

3.3. **Annual Review of Charges**

In addition to the Cost Review Meetings detailed in Clause 1.5 of **Schedule D (Pricing, Invoicing and Payments)**, the Parties will perform an annual review of the Charges (including any expenses or Charges charged on a Pass Through Expense Basis and/or a Time and Materials Basis under the Agreement) and Supplier's efforts and success in fulfilling its obligations set out in Clause 1.4 of **Schedule D (Pricing, Invoicing and Payments)**. As part of these periodic reviews, Supplier will provide a description of the success to date in fulfilling such obligations including analyses of: (i) any reduction in Charges and Pass Through Expenses; and (ii) potential savings achieved or anticipated.

4. PROJECT AND CONTRACT MANAGEMENT

4.1. Steering Committee

The Parties will form a steering committee to facilitate communications between them ("**Steering Committee**"). The Steering Committee will be composed of the SARS Contract Executive (and at such Executive's election, other SARS Personnel) and Service Delivery Manager.

4.2. Reports

Supplier will provide SARS with the reports reasonably required by SARS, including the reports set out in **Appendix B-3 (Reports)**. The format, content and frequency of such reports will be as is reasonably required by SARS.

4.3. Meetings

4.3.1. Within 30 (thirty) days of the Commencement Date of a Work Order or Change Order, Supplier will propose for SARS's review and approval a set, or an amended set if such a set has been proposed by Supplier and approved by SARS regarding a previous Work Order or Change Order, of monthly, annual and other periodic meetings to be held between representatives of SARS and Supplier.

4.3.2. As of the Commencement Date in Clause 4.3.1, such proposed set should include the following or as is set out in the Work Order or Change Order:

4.3.2.1. a monthly meeting to be held by the SARS Contract Executive (and at such Executive's election, other members of SARS contract management team) and the Service Delivery Manager to discuss day-to-day operations, the status of on-going and planned activities including changes that might adversely affect performance, and such other matters as appropriate;

4.3.2.2. a quarterly management meeting of the Steering Committee to:

- (i) review the monthly performance reports for each month during the quarter;
- (ii) review Supplier's overall performance under the Agreement;
- (iii) review progress on the resolution of issues;
- (iv) provide a strategic outlook for the systems requirements of SARS; and
- (v) discuss such other matters as appropriate;

- 4.3.2.3. an annual meeting of senior management of the Parties to review relevant relationship, contract and performance issues; and
 - 4.3.2.4. such other meetings between SARS and Supplier Personnel as may be reasonably requested by SARS and as may be necessary to address relevant relationship, contract and performance issues.
- 4.3.3. Supplier will prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Supplier will incorporate into such agenda items that SARS desires to discuss. At the request of SARS, Supplier will prepare and circulate minutes promptly after a meeting for review and approval by SARS.

4.4. **SARS Policies, Procedures, Standards and Guidelines**

4.4.1. **Compliance with Policies**

Supplier will comply with the following (and to the extent that the same issue is addressed by two or more of these policies or procedures, Supplier will comply with the higher standard):

- 4.4.1.1. SARS PPS&G, as such policies and procedures may be changed in terms of Clauses 4.4.3 and 4.4.4; and
 - 4.4.1.2. Supplier's standard policies and procedures that relate to the performance of the Deliverables or Supplier's other obligations under this Agreement (to the extent that they do not conflict with the SARS Policies or the other provisions of this Agreement) ("**Supplier Policies**"). Supplier will provide copies of the Supplier Policies (including any amendments, updates or replacements) to SARS.
- 4.4.2. SARS PPS&G as at the Effective Date are attached hereto as **Appendix E-2 (SARS PPS&G)**.

[Note to the Bidder: Appendix E-2 (SARS PPS&G) will be established prior to the Effective Date.]

- 4.4.3. If SARS changes the SARS PPS&G, or introduces new standard policies and procedures that are applicable to the Deliverables, SARS will provide

Supplier with reasonable notice, and a copy, of same. The pricing impact (if any) of such a change will be addressed in terms of Clause 7 of D (Pricing, Invoicing and Payments).

- 4.4.4. Changes to the Supplier Policies will not result in an increase in the Charges or in any other costs to be borne by SARS (e.g. Pass Through Expenses, internal cost).

4.5. **Process and Procedures Library**

- 4.5.1. As part of the Deliverables, Supplier, in consultation with SARS, will prepare a Process and Procedures Library within 30 (thirty) days detailing the operational and management processes by which the Supplier will perform and deliver the Deliverables under this Agreement. The Process and Procedures Library will also include:

- 4.5.1.1. change control processes;
- 4.5.1.2. incident management processes;
- 4.5.1.3. problem management processes;
- 4.5.1.4. business continuity processes;
- 4.5.1.5. backup and restore processes;
- 4.5.1.6. capacity management practices;
- 4.5.1.7. project management processes;
- 4.5.1.8. reporting processes; and
- 4.5.1.9. various administrative processes including invoicing practices.

- 4.5.2. The Process and Procedures Library will be suitable and accessible for use by SARS Personnel to understand how Supplier will provide the Deliverables and to enable SARS and SARS's internal and external auditors to verify and audit the manner in which the Supplier is providing the Deliverables.

- 4.5.3. The Supplier will develop the Process and Procedures Library for SARS's review and approval, and obtain SARS's review and approval of an integrated Process and Procedures Library for all of the Deliverables within 30 (thirty) days of the Commencement Date. Failure to provide a final draft that is reasonably acceptable to SARS within the aforementioned time period will be a material breach of the Agreement. SARS will provide

detailed and reasonable comments on each draft within 15 (fifteen) Business Days after receipt of any draft and Supplier will incorporate such comments in the next draft.

Supplier will update the Process and Procedures Library on an on-going basis during the Term to reflect changes in the operations or procedures described therein. Supplier will provide updates to the Process and Procedures Library to SARS on the 5th (fifth) business day of each month during the Term or review and approval.

- 4.5.4. The Supplier will perform the Deliverables in terms of the Process and Procedures Library provided that, in the event there is a conflict between the provisions of this Agreement and the provisions of the Process and Procedures Library, the provisions of this Agreement will take precedence. Moreover, the Process and Procedures Library may not: (i) be contrary to the scope of Deliverables; or (ii) modify any of the terms or conditions of this Agreement. Without limiting the generality of Supplier's obligation to perform the Deliverables in terms of the Performance Standards, Supplier may, in terms of **Clause 4.4.1**, use existing SARS procedures prior to the approval of the Process and Procedures Library.

4.6. **On site service delivery manager**

- 4.6.1. SARS, may at any time, demand that a senior member of the Supplier's personnel, (the "Service Delivery Manager") be placed at SARS's head office on a full-time basis. The Service Delivery Manager will act a liaison between SARS and the Supplier for all matters related to the Deliverables. The Supplier, on receiving notice from SARS that the Supplier must place a Service Delivery Manager at SARS's head office shall cause the Service Delivery Manager to be placed at SARS's head office within 60 (sixty) days.
- 4.6.2. SARS may, at any time, by giving not less than 45 (forty-five) days' notice, require that the Supplier remove the Service Delivery Manager from the premises at SARS head office. No charges will be made by the Supplier for the Service Delivery Manager after the Service Delivery Manager has been removed from the site.
- 4.6.3. The Supplier will charge for the Service Delivery Manager on a Time and Material basis in accordance with the Monthly Personnel Rates.

5. WORK ORDER AND CHANGE ORDER

- 5.1. The Parties may, from time to time, include under the Agreement, Work Orders and Change Orders pertaining to New Deliverables, Projects or changes to the Deliverables provided by the Supplier to SARS under the Agreement, substantially in accordance with the Work Order template annexed hereto as **Appendix M-1 (Form of a Work Order)** or Change Order template annexed hereto as **Appendix M-2 (Form of a Change Order)**.
- 5.2. The provisions of this Agreement will apply to each and every Work Order and or Change Order issued under this Agreement.
- 5.3. The Supplier will provide the Deliverables to the Customer subject to the terms and conditions of this Agreement generally and in particular subject to the terms and conditions set forth in the relevant Work Order and/or Change Order provided that a Work Order and/or Change Order may amend the terms and conditions of this Agreement only with respect to the subject matter of such Work Order and/or Change Order.

APPENDIX E-1: KEY SUPPLIER POSITIONS

1. KEY SUPPLIER POSITION

When Supplier is required to provide a Service Delivery Manager by SARS, the Service Delivery Manager position will be a Key Supplier Position and the person appointed to the position will be regarded as Key Supplier Personnel.

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APPENDIX E-2: SARS PPS&G

[Note to the Bidder: This Appendix E-2 (SARS PPS&G) will be populated in accordance with Clause 4.4.2 of Schedule E (Governance)]

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APPENDIX E-3: FORM OF A CHANGE ORDER

THIS CHANGE ORDER NO. _____ dated as of [_____] (the 'Change Order Commencement Date') is being executed with respect to the Deliverables/Work Order #_____ and pursuant to the NISD Solutions Agreement between South African Revenue Service ("SARS") and [_____] (Proprietary) Limited, (Registration No. [_____] ("Supplier") dated [_____] , the terms of which are incorporated herein by reference. Capitalised terms used but not defined herein shall have the meanings given to them under **Schedule A (Glossary)** of the aforesaid Agreement.

All terms and conditions of the Deliverables/Work Order not specifically amended in terms of this Change Order will remain in full force and effect. Any conflict between the terms and conditions of this Change Order, Work Order and or the Agreement shall be addressed in accordance with **Clause 2.3** of the **Main Agreement**.

DESCRIPTION OF THE CHANGES TO SERVICES

[Note to the Parties: Please insert a description of the changes to the Deliverables/Work Order provided under this Change Order. Upon execution of this Change Order Supplier shall implement such changes. For purposes of clarity, New Service and/or Projects shall be provided only under Work Orders and not under Change Orders.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Change Order.

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Supplier name]

South African Revenue Service

By:

By:

Printed:
Title:
Date:

Printed:
Title:
Date:

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APPENDIX E-4: FORM OF A WORK ORDER

THIS WORK ORDER NO. _____ dated as of [_____] (the '**Work Order Commencement Date**') is being executed pursuant to the NISD Solutions Agreement between South African Revenue Service ("**SARS**") and [_____] (Proprietary) Limited, (Registration No. [_____] ("**Supplier**") dated as of [_____] , the terms of which are incorporated herein by reference (the "**Work Order**"). Capitalised terms used but not defined herein shall have the meanings given to them under **Annexure A (Glossary)** to the aforesaid Agreement.

1. DESCRIPTION OF THE SERVICES

[Note to the Parties: Please insert a description of the Deliverables under this NISD Solutions Agreement. Identify Supplier resources, hardware to be provided by Supplier and Third Party Software to be provided by Supplier.]

2. DURATION/DELIVERABLES AND TIMELINE

[Note to the Parties: delete whichever is not applicable]

- 2.1. This Work Order will commence on the Work Order Commencement Date and will terminate on [_____] unless extended or terminated earlier in accordance with the Agreement.
- 2.2. Supplier shall procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table B-1.

[Note to the Parties: In the case of Projects, please identify each Deliverable and provide the other information required to complete Table B-1]

Table B-1		
Name of Deliverable	Description	Key Milestones and Timeline

Table B-1		
Name of Deliverable	Description	Key Milestones and Timeline

[Note to the Parties: In the case of New Deliverables and/or applicable maintenance and support, please identify the scope of the New Service and provide the other information required to complete Table B-2]

Table B-2	
Scope	Description

3. SERVICE LEVELS AND SERVICE LEVEL CREDITS

[Note to the Parties: Please list any applicable Service Levels and Service Level Credits]

4. SUPPLIER CHARGES

Supplier's Charges for Deliverables of this Work Order under the NISD Solutions Agreement shall be the amount of R [_____] in accordance with Table B-3 below:

Table B-3	
Name of Deliverable/New Service	Allocated Portion of the Fixed Price

Total:	
---------------	--

[Note to the Parties: Please list the name of each Deliverable identified in Tables B-4 and take note of Payment Milestones for each such Deliverable/New Service as set out in Table B-3. Table B-4 may be adapted to suit the requirements]

Table B-4			
Name of Deliverable	Payment Milestones for such Deliverable	Amount to be Paid Upon Achievement of Milestone	Dates that Payment Milestones are to be Achieved
Total:			

[Signature blocks appear on the next page.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Work Order.

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Supplier name]

South African Revenue Service

By:

By:

Printed:
Title:
Date:

Printed:
Title:
Date:

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APPENDIX E-5: FORM OF CHARGE ADJUSTMENT ACCEPTANCE

1. We refer to the NISD Solutions Agreement (the “**Agreement**”) which commenced on [_____] concluded between South African Revenue Service (“**SARS**”) and [_____] (Proprietary) Limited, (Registration No. [_____] (the “**Supplier**”).
2. In terms of the aforesaid Agreement, the Supplier provides to SARS, *inter alia*, the Deliverables (as defined in the Agreement), at a charge to be reviewed by the Parties annually.
3. Therefore in accordance with **Clause 10 of Schedule D (Pricing, Invoicing and Payments)** of the Agreement, it is hereby recorded that the Parties have reached consensus that the Charges are amended as per the attached pricing tables.
4. The Agreement is hereby amended and the Charges as per paragraph 3 above will apply with effect from [_____] until [_____].

[Signature blocks appear on the next page.]

The Parties’ duly authorised representatives hereby confirm their acceptance of the terms and conditions set out above.

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:



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SCHEDULE F: DISENGAGEMENT ASSISTANCE

1. GENERAL

- 1.1. Supplier will, during the Disengagement Assistance Period provide to SARS, or at SARS' request to a Successor (where SARS is not the Successor), without interruption or degradation of the Deliverables: (i) such termination/expiration assistance as SARS may request to facilitate the transition of the Deliverables to SARS or a Successor; and (ii) to the extent applicable, hardware and Software, ("**Disengagement Assistance**").
- 1.2. Disengagement Assistance provided to SARS prior to the effective date of termination or expiration will be chargeable by Supplier to SARS only to the extent that the appointment of additional resources (above and beyond those resources used in providing the Deliverables) is strictly necessary for Supplier to provide such assistance and provided Supplier has notified SARS of such appointment and SARS has pre-approved such appointment (and related charges) in writing, which approval will be exercised at SARS's sole discretion. Supplier will use Commercially Reasonable Efforts to perform the Disengagement Assistance without deploying additional resources. Disengagement Assistance provided to SARS after the effective date of termination or expiration pre-approved by SARS in writing in SARS sole discretion, will be chargeable to SARS on a Time and Materials Basis in accordance with the Personnel Rates. Charges related to materials will be treated on a Pass Through Expense Basis and be pre-approved by SARS in writing, in SARS sole discretion.
- 1.3. Disengagement Assistance will include the provision of all information and assistance requested by SARS and necessary to ensure the seamless transition of Deliverables and functions being performed by Supplier or its agents to the Successor. Disengagement Assistance may include capacity planning, consulting services, facilities planning, telecommunications planning, Software configuration, reviewing all system Software with a new vendor, generating machine readable listings of source code, uploading production databases, providing parallel processing, testing, and providing such other assistance as is described in this **Schedule F (Disengagement Assistance)**. The Supplier shall document all information, knowledge transfer and the like, keep it up to date and provide such documentation to SARS, in a format acceptable to SARS, as part of Disengagement

Assistance.

1.4. Supplier will perform the Disengagement Assistance in a manner such that (to the extent within Supplier's control):

1.4.1. the Terminated Deliverables are transferred to the Successor in an efficient and orderly manner;

1.4.2. the impact on SARS' operations (including SARS Personnel) and the internal and Third Party costs incurred by SARS in transferring the Terminated Deliverables are minimised;

1.4.3. the Terminated Deliverables continue to be performed by Supplier until the Termination Date has occurred without disruption or deterioration except as approved by SARS and included in the Disengagement Assistance Plan;

1.4.4. any disruption or deterioration of the Terminated Deliverables following the Termination Date (except as approved by SARS and included in the Disengagement Assistance Plan) is minimised;

1.4.5. there is a knowledge transfer as part of which SARS and/or the Successor are provided with all information held by Supplier (or a Subcontractor) that is required to perform services replacing or reasonably equivalent to the Terminated Deliverables following the Termination Date; and

1.4.6. SARS is able, at its option, to receive services similar to the Terminated Deliverables, independently of the Supplier following termination, including by the transfer to the SARS or the Successor of the resources specified in **Clause 3 of this Schedule F (Disengagement Assistance)**.

1.5. If there is more than one Successor, then Supplier will perform the Disengagement Assistance in respect of each Successor.

1.6. **Approach to disengagement**

SARS will be entitled to determine on notice to Supplier the approach to be taken in respect of the transfer of the Terminated Deliverables, including that:

1.6.1. the transfer of the Terminated Deliverables from Supplier to a Successor may either occur:

- 1.6.1.1. on the Termination Date; or
- 1.6.1.2. over a period prior and up to the Termination Date in accordance with a timetable, specified by SARS with a corresponding adjustment of the Charges in accordance with **Clause 13 of Schedule D (Pricing, Invoicing and Payments)**, provided that all Terminated Deliverables will cease being performed by Supplier no later than the Termination Date; and
- 1.6.2. interim changes are made to the Deliverables to enable the transfer of the Terminated Deliverables.

1.7. **Disengagement Assistance Plan**

- 1.7.1. A plan (the Disengagement Assistance Plan) will be developed for each transfer of Terminated Deliverables. SARS will elect whether the Disengagement Assistance Plan is to be developed by SARS or in whole or part by Supplier.
- 1.7.2. If SARS elects to develop the Disengagement Assistance Plan (or any part thereof), SARS will provide the Disengagement Assistance Plan to Supplier.
- 1.7.3. If SARS elects for Supplier to develop all or part of the Disengagement Assistance Plan, then:
 - 1.7.3.1. a detailed draft that complies with this Agreement will be delivered to SARS for its comments and review by:
 - (a) in the case of expiry of the Term, 6 (six) months prior to the end of the Term; or
 - (b) in all other cases, 10 (ten) Business Days following the date of delivery of a notice of termination or a notice to reduce the scope of the Deliverables.
 - 1.7.3.2. Supplier will incorporate SARS's reasonable comments and changes into the Disengagement Assistance Plan (and any subsequent version of the Disengagement Assistance Plan) and finalise the Disengagement Assistance Plan within 15 (fifteen) days following receipt of the same; and
 - 1.7.3.3. the final Disengagement Assistance Plan will be subject to the

written approval of SARS (not to be unreasonably withheld).

- 1.7.4. The Disengagement Assistance Plan will clearly and in detail:
- 1.7.4.1. give effect to any approach to the Disengagement Assistance specified by SARS in accordance with **Clause 1.6**;
 - 1.7.4.2. describe actions to be taken by Supplier in performing the Disengagement Assistance (without limitation to any other actions requested by SARS pursuant to this **Schedule F (Disengagement Assistance)** during the Disengagement Assistance Period);
 - 1.7.4.3. subject to **Clause 1.7.7**, describe in detail any SARS and/or Successor tasks (including an estimate of the specific staffing required);
 - 1.7.4.4. describe how any transfer of assets and contracts will be achieved;
 - 1.7.4.5. specify the detailed information that will be provided (having regard to the categories in **Appendix F-1 (Disengagement Assistance Data)**);
 - 1.7.4.6. set out the timetable for the transfer of each element of the Terminated Deliverables (including key milestones to track the progress of the transfer); and
 - 1.7.4.7. specify reasonable acceptance criteria and testing procedures to confirm whether the transfer of the Terminated Deliverables has been successfully completed.
- 1.7.5. Following SARS's approval of/and authorisation to proceed with the final Disengagement Assistance Plan, Supplier will perform the Disengagement Assistance in accordance with the Disengagement Assistance Plan.
- 1.7.6. During the Disengagement Assistance Period, both Party may propose changes to the Disengagement Assistance Plan and Supplier will proactively recommend changes that are necessary or desirable. Any changes to the Disengagement Assistance Plan will be subject to the other Party's approval (not to be unreasonably withheld).
- 1.7.7. SARS (or Successor) tasks to be performed in respect of Disengagement

Assistance will only apply where:

- 1.7.7.1. the task is reasonable and there is no other practical manner in which Supplier can perform the Disengagement Assistance without such task being performed by SARS or a Successor; or
- 1.7.7.2. SARS notifies Supplier that SARS wishes to perform such task.

1.8. **Disengagement Assistance Management**

- 1.8.1. Supplier will appoint a senior project manager as its "**Disengagement Assistance Manager**" who will be responsible for the overall performance of the Disengagement Assistance and who will be the primary point of contact for SARS in respect of the Disengagement Assistance during the Disengagement Assistance Period. Supplier will appoint such representative by the relevant date specified in **Clause 1.7.3.1**.
- 1.8.2. SARS will appoint a senior project manager as its "**SARS Disengagement Assistance Manager**" who will be the primary point of contact for Supplier during the Disengagement Assistance Period.
- 1.8.3. Both Parties will use Commercially Reasonable Efforts to ensure that any Disengagement Assistance issues or disputes are resolved promptly by the Disengagement Assistance Managers. Any disputes that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in **Clause 25** of the **Main Agreement**.
- 1.8.4. Supplier will manage the Disengagement Assistance in accordance with SARS's reasonable directions, including:
 - 1.8.4.1. resolving any Incidents or problems arising with respect to the Disengagement Assistance;
 - 1.8.4.2. defining an escalation process, as approved by SARS, to be used if there is a failure in any part of the disengagement;
 - 1.8.4.3. establishing, as directed by SARS, the necessary communications and interfaces between SARS, Supplier, the Successor and the Subcontractors; and subject to the provisions of **Clause 1.2** above, providing individuals with the required expertise to perform Disengagement Assistance.

- 1.8.5. Supplier will monitor progress of all tasks and responsibilities in the Disengagement Assistance Plan (whether the responsibility of Supplier, SARS or any Third Party) against the Disengagement Assistance Plan and promptly escalate to SARS any failures (or potential failures) to perform any tasks or responsibilities, including failures by SARS or the Successor.
- 1.8.6. Supplier will provide reports to SARS not less than once a week which:
- 1.8.6.1. describe the progress of the Disengagement Assistance against the Disengagement Assistance Plan; and
 - 1.8.6.2. identify any risks encountered during the performance of the Disengagement Assistance and propose steps to mitigate such risks.
- 1.8.7. The Disengagement Assistance Managers appointed pursuant to **Clauses 1.8.1** and **1.8.2** above will meet on a weekly basis (or as otherwise required by SARS) during the Disengagement Assistance Period to review the status of the Disengagement Assistance Plan.
- 1.8.8. SARS may appoint a Successor during the Disengagement Assistance Period to manage Supplier's performance of the Disengagement Assistance and any Terminated Deliverables. Supplier will follow the direction of such Successor only to the extent that:
- 1.8.8.1. Supplier would be obliged to follow SARS's directions under this Agreement; and
 - 1.8.8.2. SARS has authorised the Successor and notified Supplier of such authorisation.

1.9. **Confidentiality and Security Compliance**

- 1.9.1. Prior to a Successor (other than SARS) being provided with any Supplier Confidential Information as part of Disengagement Assistance, SARS will enter into a confidentiality agreement with the Successor on terms substantially similar to those set out in **Clause 15** of the **Main Agreement** or as otherwise agreed by the Parties.
- 1.9.2. SARS will procure that any Successor entering any Supplier or Subcontractor facilities in connection with the Terminated Deliverables will comply with Supplier's reasonable security and site regulations and policies

notified to SARS in advance.

2. SPECIFIC DISENGAGEMENT ASSISTANCE REQUIREMENTS

2.1. Bid Assistance

2.1.1. At any time during the Term (whether before or during the Disengagement Assistance Period), Supplier will, as requested by SARS, reasonably co-operate and promptly provide assistance with any bid or tender process that SARS runs in relation to any of the Terminated Deliverables (or potential Terminated Deliverables) including:

2.1.1.1. providing information, reports and data for inclusion in SARS's request for information and request for proposals;

2.1.1.2. answering questions raised by potential Successors; and

2.1.1.3. allowing potential Successors to perform reasonable due diligence activities in respect of the relevant Deliverables, including providing reasonable access to facilities from where the Deliverables are performed (subject to Supplier's reasonable security requirements), Supplier support systems and Supplier Personnel (including personnel located off SARS Sites); provided that such due diligence will be performed in such a reasonable manner so that it does not materially disrupt Service performance (unless SARS excuses such disruption in advance, in writing).

2.1.2. The bid assistance to be performed pursuant to **Clause 2.1.1** above will be at least to the level that would be required for reasonably skilled and experienced Third Party suppliers to:

2.1.2.1. prepare an informed, non-qualified offer for the relevant Terminated Deliverables; and

2.1.2.2. not be disadvantaged compared to Supplier (if Supplier is invited to participate) in respect of access to information; and

in any event, be no less than the co-operation and assistance provided by SARS to Supplier prior to the Effective Date.

2.2. Return of Materials

Supplier will provide SARS with (or destroy) the SARS Confidential Information in accordance with **Clause 15.8** of the **Main Agreement**.

2.3. Information

2.3.1. As requested by SARS, Supplier will promptly (and in any event within 5 (five) Business Days following the request) provide SARS with and permit SARS to share with the Successor if the Successor is not SARS:

2.3.1.1. the information and data listed in **Appendix F-1 (Disengagement Assistance Data)**, subject to any timing restrictions specified in that appendix;

2.3.1.2. any other information relating to the Deliverables which would be reasonably required by a reasonably skilled and experienced provider of services to continue to perform the Deliverables without disruption or deterioration following the Termination Date.

2.3.2. Subject to **Clause 1.8** above, SARS may provide to a Successor (or potential Successor): (a) the information identified in **Clause 2.3.1**; and (b) the Agreement.

2.3.3. Supplier will provide updates to the information provided pursuant to this **Schedule F (Disengagement Assistance)**, during the Disengagement Assistance Period.

2.4. Knowledge Transfer

Supplier will provide knowledge transfer services to the Successor (and SARS where SARS is not the Successor) as reasonably required by SARS, including:

2.4.1. explaining procedures, standards and operations used to perform the Terminated Deliverables;

2.4.2. answering questions in respect of the information provided pursuant to **Clause 2.3** above; and

2.4.3. for reasonable periods during the Disengagement Assistance Period prior to the Termination Date, allowing Successor personnel to work alongside Supplier Personnel on a collaborative basis, to shadow their role and

enable knowledge transfer and SARS may, at its discretion on a Time and Materials Basis, extend this Agreement for shadowing purposes as set out in this **Clause 2.4.3**.

2.5. **Co-operation**

As requested by SARS, Supplier will co-operate with (and procure that the Subcontractors co-operate with) the Successor during the Disengagement Assistance Period.

2.6. **Change Freeze**

Supplier will, unless otherwise approved by SARS, ensure that during the 1 (one) month period prior to the Termination Date no material changes are made to:

- 2.6.1. the Terminated Deliverables (including to any hardware, Software or other facilities used to perform the Terminated Deliverables), other than changes necessary for the continued performance of the Deliverables in accordance with the Performance Standards; and
- 2.6.2. any hardware, Software or contracts that SARS has the right to acquire in accordance with **Clause 3** below.

2.7. **Backlogs**

Supplier will perform its obligations under this Agreement so that there is not an unreasonable backlog of requests for support or resolution of Incidents as at the Termination Date. The final payment of invoices under this Agreement shall be withheld until the agreed backlog has been cleared.

2.8. **Business Continuity**

Supplier will provide the following assistance to support SARS's requirements for business continuity:

- 2.8.1. where SARS is not the Successor, informing Successors of SARS's then-current policies and procedures with regard to backup and disaster recovery relating to the Terminated Deliverables;
- 2.8.2. arranging for additional overlapping coverage or support through the Run Down Period to minimise disruption in the event of an outage during the

Run Down Period; and

- 2.8.3. as requested by SARS, assisting in disaster recovery testing during the Run Down Period in accordance with the processes and procedures detailed in the Process and Procedures Library.

3. TRANSFER OF ASSETS AND GRANT OF RIGHTS

3.1. Option to purchase hardware

- 3.1.1. At SARS's election, Supplier will sell to SARS some or all of the hardware used primarily to provide the Deliverables to SARS. Supplier will sell hardware that SARS elects to purchase under this provision at the lesser of fair market value or net book value. For this purpose, fair market value will be determined by a registered valuator designated by SARS.

By the relevant date as contemplated in **Clause 1.7.3.1** above, Supplier will provide a list of any hardware that is owned by Supplier or a Subcontractor and is used primarily to provide the Deliverables to SARS. The list will specify for each item of hardware: the manufacturer, model, configuration, age, location, function in the provision of the Deliverables and net book value.

- 3.1.2. If SARS elects to purchase hardware pursuant to **Clause 3.1.1** above, then:

3.1.2.1. as requested by SARS, Supplier will de-commission the purchased hardware and prepare it for transportation (including packaging) or provide it for collection by SARS or the Successor;

3.1.2.2. risk in the purchased hardware will pass to SARS only upon collection by SARS or upon delivery to SARS; and

3.1.2.3. Supplier will execute or provide any title, bills of sale, invoices or other documents as may be required to give effect to this **Clause 3.1** and to perfect the transfer of title to SARS or the Successor.

- 3.1.3. If SARS elects not to purchase any such hardware, Supplier will be responsible for the re-use or safe disposal of the same (including, if it

contains any SARS data, cleansing the same to the standards specified in this Agreement).

3.1.4. Supplier will provide SARS, the Successor or both (as specified by SARS) with such assistance as is reasonably required to ensure the migration of SARS's Software, SARS data or SARS-provided resources from any hardware which SARS does not wish to acquire to alternative hardware designated by SARS, or secure deletion (as required by SARS).

3.1.5. At SARS's election, Supplier will assign to SARS some or all of the Third Party contracts relating to hardware used primarily to provide the Deliverables to SARS. Supplier will be responsible for obtaining, at its sole cost and expense, any Required Consents necessary for the assignment of the applicable lease.

3.2. **Assignment of contracts**

3.2.1. SARS or a Successor (where SARS is not the Successor) will have the option (exercisable by SARS on a contract by contract basis) to assume contracts for any Deliverables provided by Third Parties to Supplier and used exclusively by Supplier to provide Deliverables to SARS. Supplier will take all steps necessary to formally assign such contracts to SARS. In respect of Third Party Contracts, Supplier will, where required by SARS, use Commercially Reasonable Efforts to arrange for the provision of the Deliverables by the Third Party to SARS under terms at least as favourable as those in the Third Party Contract.

3.2.2. Supplier will provide further information about such contracts in accordance with **Appendix F-1 (Disengagement Assistance Data)**.

APPENDIX F-1: DISENGAGEMENT ASSISTANCE DATA

The Disengagement Assistance Data consists of:

1. THIRD PARTY CONTRACTS

In respect of each Third Party contract entered into by Supplier (or by a Subcontractor) in relation to the Deliverables, including contracts with Subcontractors, and warranties, maintenance agreements and leases relating to hardware and licences and maintenance agreements relating to Software:

- 1.1. the type of contract, such as maintenance or support services;
- 1.2. a description of the service being provided;
- 1.3. whether the contract exclusively relates to the Deliverables;
- 1.4. whether the contract can be assigned or novated;
- 1.5. the licences, rights or permissions granted under the contract by the Third Party;
- 1.6. amounts payable under the terms of such contract;
- 1.7. the remaining term of contract and termination rights;
- 1.8. contact details of the Third Party;
- 1.9. a history of dealings with the Third Party (including performance histories against service levels that may be in effect with respect to such Third Party);
- 1.10. a list of projects or unfilled orders in progress and the status of each; and
- 1.11. a copy of each of the contracts with each Third Party.

2. OTHER INFORMATION

- 2.1. A copy of all documents in the Process and Procedures Library required to provide the Deliverables to SARS;
- 2.2. Configuration documentation

- 2.3. Site designs
- 2.4. A list of any Tools, systems, hardware, assets, Software, processes and procedures that are necessary to perform the Deliverables that will not be transferred to the Successor;
- 2.5. All Software back-ups of systems used to perform the Deliverables;
- 2.6. Any security features, passwords and password control policies that the Successor needs to know to continue to perform the Deliverables;
- 2.7. Key support contact details for Supplier Personnel and Third Party suppliers (excluding Subcontractors), including a contact listing of current potential alternative sources of resources, including skilled labour and spare hardware and parts; and
- 2.8. Work volumes, staffing requirements, actual Service Levels and information on historical performance for each Service component during the preceding 12 (twelve) months.

SCHEDULE G: REQUEST FOR PROPOSAL

[Note to the Bidder: The Request for Proposal documentation will be attached here]

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SCHEDULE H: SUPPLIER PROPOSAL

[Note to the Bidder: The Bidder's Proposal will be included upon finalisation of Agreement]

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SCHEDULE I: BROAD-BASED BLACK ECONOMIC EMPOWERMENT

1. INTRODUCTION

- 1.1. The Parties are cognisant of the B-BBEE Act 53 of 2003 as amended by the B-BBEE Amendment Act 46 of 2013 together with the applicable codes published..
- 1.2. The Service Provider will use Commercially Reasonable Efforts to submit a BBBEE certificate, measuring the Service Provider's BEE Status in accordance with the new Codes before or on the Effective Date. SARS may in its sole discretion extend the submission date to the first anniversary of the Effective Date.
- 1.3. The Service Provider will use Commercially Reasonable Efforts to ensure that its BEE Status remains the same or does not decrease more than 1 (one) Level below the Level contained in the Verification Certificate submitted with the Service Provider's Proposal.

2. BBBEE

- 2.1. This Schedule H sets out, amongst other things, subject to clause 1 above, the minimum BEE Status that the Service Provider undertakes and warrants will be maintained for duration of the Term.
- 2.2. In this Schedule H the provisions of the Act and the Codes (defined below) will apply mutatis mutandis to any words and expressions, the meaning of which for purposes of this Schedule H are not defined in this clause 2.2, and unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
 - 2.2.1. "**Act**" means the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003);
 - 2.2.2. "**BBBEE**" means broad-based black economic empowerment, as defined in the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003);

2.2.3. **“BEE Certification Document”** means the certification documentation required in accordance with an organisation’s classification as set out in the table below:

Classification	Turnover	Submission Requirement
Exempted Micro Enterprise (EME)	Below R10 million p.a	A sworn Affidavit or Certificate from CIPC
Qualifying Small Enterprise (QSE)	Between R10 million and R50 million p.a.	A sworn Affidavit – only 51% BO and above Certified copy of B-BBEE Rating Certificate from a SANAS Accredited rating agency.
Large Enterprise (LE)	Above R50 million p.a.	Certified copy of B-BBEE Rating Certificate from a SANAS Accredited rating agency.

2.2.4. **“BEE Data”** means without limitation, all the underlying data relating to an Entity which has been relied upon or utilised by a Verification Agency for the purposes of issuing a Verification Certificate in respect of an Entity's BEE Status;

2.2.5. **“BEE Status”** means the BEE Status of an Entity based on its Generic Scorecard (or the QSE scorecard, as may be applicable) as measured and certified by a Verification Agency in accordance with the applicable Codes or the compliance bands applicable to QSE’s under the Codes, as the case may be.

B-BBEE Status	Qualification
Level One Contributor	≥100 points on the Generic Scorecard

Level Two Contributor	≥95 but <100 points on the Generic Scorecard
Level Three Contributor	≥90 but <95 points on the Generic Scorecard
Level Four Contributor	≥80 but <90 points on the Generic Scorecard
Level Five Contributor	≥75 but <80 points on the Generic Scorecard
Level Six Contributor	≥70 but <75 points on the Generic Scorecard
Level Seven Contributor	≥55 but <70 points on the Generic Scorecard
Level Eight Contributor	≥40 but <55 points on the Generic Scorecard
Non-Compliant Contributor	<40 points on the Generic Scorecard

2.2.6. **“CCA”** means the Close Corporation Act 69 of 1984;

2.2.7. **“CIPC”** means the Companies and Intellectual Property Commission;

2.2.8. **“Codes”** mean generally, the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under clause 9 of the Act on 9 February 2007 and the specific Code applicable;

2.2.9. **“Entity”** means for purposes of this Schedule H, the Service Provider and any subsidiary of the Service Provider specifically cited as a subsidiary in the Verification Certificate of the Service Provider's group of companies;

2.2.10. **“Element”** means the measurable quantitative or qualitative elements of the Generic Scorecard (or the QSE scorecard, as may be applicable), being Ownership, Management, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio-Economic Development Initiatives, and each of the specific scorecards relating to these elements, measured in accordance with the respective Codes;

2.2.11. **“EME”** means an Exempted Micro Enterprise as defined under **Schedule 1** to the Code;

- 2.2.12. "**LE**" means Large Enterprise as defined under Schedule 1 to the Codes;
- 2.2.13. "**QSE**" means a Qualifying Small Enterprise as defined under Schedule 1 to the Codes;
- 2.2.14. "**SANAS**" means South African National Accreditation System, being the only national accreditation body recognized by the South African Government;
- 2.2.15. "**Statements**" mean generally, the statements to the Codes and in respect of the specific Code applicable, the specific statement thereto;
- 2.2.16. "**Verification Agency**" means a BEE Verification Agency contemplated by the Codes which, at the time of the issue of any certificate or confirmation of any aspect of any Entity's BEE status for purposes of this Schedule I, is –
- 2.2.16.1. a verification agency accredited by SANAS; or alternatively;
- 2.2.16.2. in respect of any certificate or confirmation of any aspect of any Entity's BEE Status issued after 1 February 2010 (and for 12 months thereafter), a verification agency that has been issued with a valid pre-assessment letter from SANAS; and
- 2.2.16.3. "**Verification Certificate**" means a certificate which may be required in terms of this **Schedule I** issued by a verification agency, verifying an Entity's BEE Status level, the details of its scorecard performance on the Elements of the Generic Scorecard (or QSE Scorecard, as may be applicable), and any other aspect of its BEE performance under the Codes or, verifying the BEE Status level, the details of the scorecard performance and any other aspect of BEE performance under the Codes of a group of companies of which an Entity forms part, provided that such Entity is specifically cited as a subsidiary in the

Verification Certificate of that group of companies.

- 2.3. The Service Provider, subject to clause 1 above, undertakes and warrants that, for the full duration of the Term, the Service Provider and its Subcontractors will provide SARS with valid BEE Certification Documentation.
- 2.4. In the event the Service Provider, or any of its Subcontractors, fail to obtain and submit BEE Certification Documentation as is required in terms of their classification (in accordance with the table set out in 2.1.3 above) that is valid at a point in time during the term of the Agreement, the Service Provider will promptly inform SARS of such failure. The Service Provider will, within 14 (fourteen) days of it becoming aware of such failure, submit a full report to SARS detailing the events and circumstances leading to the failure to obtain valid BEE Certification Documentation either by the Service Provider or by one of its Subcontractors.
- 2.5. The Service Provider will, annually, at the earlier of, the anniversary of the Effective Date of the Agreement or, prior to the expiry of the Service Provider's previously applicable BEE Certification Documentation, provide to SARS BEE Certification Documentation for the Service Provider comprising the following –
 - 2.5.1. a certification of its overall BEE Status, and
 - 2.5.2. a certification of its scoring on all the Elements of the Generic Scorecard (or QSE Scorecard as may be applicable) stipulating –
 - 2.5.2.1. the points scored on each Element under the applicable scorecard;
 - 2.5.2.2. the percentage achieved on each element under the applicable scorecard; and
 - 2.5.2.3. The BBBEE Report must be submitted
- 2.6. The Service Provider will, upon the written request of SARS at any time for the duration of this Agreement, within 30 (thirty) business days, provide SARS with any BEE Data SARS considers relevant to its evaluation of the Service Provider's or the Service Provider's Subcontractor's BEE Status or, the Service Provider's or the Service Provider's Subcontractor's BEE Status

performance on any Element of the Generic Scorecard (or QSE Scorecard as may be applicable) for purposes of this **Schedule I**.

- 2.7. 2.62.3SARS reserves the right to require the Service Provider and or its Subcontractor, either before adjudication or at any time subsequently, to substantiate any claim in regard to B-BBEE/ preference, in a manner required by SARS.
- 2.8. In the event that the Service Provider, at any time for the duration of this Agreement, undergoes any corporate or internal restructuring or change which has (or, is reasonably likely to have) a negative impact on its BEE Status (as per the Verification Certificate required to be lodged from time to time in terms of this Agreement) or, undertakes any contractual commitment to do so, the Service Provider will be required to notify SARS thereof forthwith, providing full details of the impact (or anticipated impact) such restructuring or change (or proposed restructuring or change) will have on each Element of the Service Provider's Generic Scorecard, in the form of written confirmation to this effect from a Verification Agency and the steps that will be taken by the Service Provider to regain a BEE Status Level in compliance with its obligations under clause 2.3 above.

SCHEDULE K: SUPPLIER'S INSURANCE POLICIES

[Note to the Bidder: The Bidder's Insurance Policies as at the time of contracting will be attached here]

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SCHEDULE L: SUBCONTRACTORS TO SUPPLIER

[Note to the Bidder: The Schedule L (Subcontractors to Supplier) will be populated from the Proposal]

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SCHEDULE M: REQUEST FOR QUOTATION (RFQ) TEMPLATE

Appendices and Attachments

Appendix M-1	Form of a Request for Quotation (RFQ)
Appendix M-2	Form of a Work Order
Appendix M-3	Form of a Change Order

SCHEDULE M

REQUEST FOR QUOTATION (RFQ) PROCESS, TERMS, CONDITIONS, RULES AND TEMPLATES

1. INTRODUCTION

This Schedule M (Request for Quotation (RFQ) Process, Terms, Conditions, Rules and Templates) sets out, amongst other things, the process, terms and rules to be adhered to in the invitation, participation and evaluation of RFQs issued in terms of RFP 22/2023.

1.1. Issuance of an RFQ

1.1.1. RFQs may be issued to Preferred Suppliers appointed as Preferred Suppliers within a Scanner Category, such Scanner Category being, at SARS sole discretion, the Scanner Category within which NISD solutions to SARS's business requirements are likely to be satisfied.

1.2. Participation in the RFQ Process

1.2.1. Where SARS requests Preferred Supplier to provide quotation in terms of this RFQ process in respect of any NISD Solution the Preferred Supplier must:

1.2.1.1. furnish SARS with a detailed written quotation or proposal upon which will be stated an all-inclusive price for such Services (with the components of the quoted pricing being specified), the technical specifications, additional warranties, maintenance and maintenance cost and checklists of all Deliverables, the details as to the date until which the quotation will be open for acceptance by SARS and any other information required by SARS;

1.2.1.2. comply with all the dates and times, including attendance at compulsory briefing sessions; site visits; requests to visit reference sites, as may be specified in the 'Required Dates with regard of the RFQ' clause contained within the RFQ. This will correspond to clause 2.4 of the RFQ Template (Appendix M-1 to this Schedule),

as it may be amended by SARS; and

1.2.1.3. notwithstanding that the Preferred Supplier cannot provide a complete solution; complete pricing or cannot meet the mandatory compliances, the Preferred Supplier must submit a response to the RFQ. The Preferred Supplier must indicate in its response that it does not comply in the sections where such responses must be made. The Preferred Supplier may provide additional documentation as part of its response to set out the reasons for its non-compliance.

1.2.2. No contractual obligation is imposed on SARS by the acceptance of Preferred Supplier's response to an RFQ and it is specifically recorded that no terms and conditions contained in any quotation document will have any force and effect. It is the intention of the Parties that on acceptance of any quotation by SARS a Work or Change Order will be concluded in accordance with this Agreement.

2. TERMS AND CONDITIONS OF THE RFQ

2.1. Unless otherwise specified in the RFQ all RFQs issued under RFP 22/2023 are issued in accordance with the following terms and conditions contained in this Schedule M or any other provision of this NISD Solutions Agreement.

2.2. SARS reserves the right in its discretion to:

- 2.2.1. make no award or to award the RFQ for only some of the scope of an RFQ;
- 2.2.2. withdraw, suspend or cancel an RFQ or the RFQ process at any time and without providing reasons;
- 2.2.3. not provide reasons for its rejection or the failure of any Preferred Supplier or its response to an RFQ;
- 2.2.4. change any of its requirements as set out in an RFQ;
- 2.2.5. change any condition, procedure or rule of an RFQ;
- 2.2.6. amend, vary, or supplement any of the information, terms or requirements contained in an RFQ, any information or requirements delivered pursuant to an RFQ;
- 2.2.7. re-issue an RFQ; and

- 2.2.8. provide further information in respect of, and modify the provisions of, this RFQ at any time prior to the Closing Date (specified in clause 2.4 (Required Dates with regard to this RFQ)) by notice to all Preferred Suppliers.

3. EVALUATION

- 3.1. Upon receipt of the RFQ response from the qualified Suppliers, SARS will evaluate the responses. During and /or following the evaluation of responses to the RFQ, SARS may

- 3.1.1. its sole discretion, request one or more presentations from the respondents to the RFQ to assist SARS in the understanding and evaluation of the proposed Solution;
- 3.1.2. request suppliers to provide any necessary clarifications either in person or in written form as advised by SARS;
- 3.1.3. conduct a Best and Final Offer (BAFO) process with respect to some or all of the scope of the RFQ;
- 3.1.4. conduct a due diligence on any Preferred Supplier, which may include interviewing customer references or other activities to verify a Preferred Supplier's submitted or other information and capabilities (including visiting the Preferred Supplier's various premises and production sites to verify certain stated facts or assumptions) and in which regard the Preferred Supplier will be obliged to provide SARS with all such access, assistance and/or information as SARS may reasonably request; or
- 3.1.5. take any other action it deems appropriate

3.2. Award of the RFQ

- 3.2.1. The Supplier may be required to lodge a Performance Bond of an amount specified in the RFQ.
- 3.2.2. The successful Supplier will be required to enter into a Work Order agreement to SARS within 14 (fourteen) days, unless an extension to this period is granted by SARS. Such Work Order will contain the Supplier's Response to the RFQ as an attachment and will be in essentially the form contained in Appendix M-2 to this Schedule M.

APPENDIX M-1: FORM OF A REQUEST FOR QUOTATION (RFQ)

This Request for Quotation (RFQ) No. _____ dated as of [_____] (the 'RFQ Issue Date') is being issued pursuant to RFP 22/2023 and the terms of NISD Agreement between South African Revenue Service ("SARS") and [_____] (Proprietary) Limited, (Registration No. [_____] ("Supplier") dated as of [_____]

Capitalised terms used but not defined herein shall have the meanings given to them under Annexure A (Glossary) to the aforesaid Agreement.

[Note to Parties: SARS will specify the elements of the RFQ under the following headings. SARS may make changes to the form of the RFQ set out below to suit the purposes of a particular RFQ]

1. RFQ PROCESS

1.1. General Notices

- 1.1.1. This RFQ is issued for quotations from Preferred Suppliers in Scanner Category(s) [_____]
- 1.1.2. The Preferred Supplier must quote for the solution in South African Rand (ZAR) at the rate of [_____] Rand to the US Dollar (USD).
- 1.1.3. Responses to this RFQ must be received by SARS at the following address before the Closing Date specified in clause 2.4 (Required Dates with regard to this RFQ)
- 1.1.4. The SARS contact for any communication in connection with this RFQ is [_____].
- 1.1.5. This RFQ will be evaluated in accordance with the [_____]. **[Note to Parties: this will specify whether this is to be evaluated in accordance with the 80/20 or 90/10 preference points system (or any other system as may be specified by legislation or regulation in force at the time of RFQ issuance.)]**

[Note to Parties: The following clauses may be included at SARS's sole discretion]

- 1.1.6. Preferred Suppliers must attend a compulsory briefing session / optional

briefing session / site visit to be conducted at the date and time specified in clause 2.4 (Required Dates with regard to this RFQ)

1.2. RFQ Process Overview

[Note to Parties: SARS will specify the detailed process to be followed in executing the RFQ process. This may include the requirements for customer visits, site visits, presentations, proof of concepts, onsite demonstrations etc.]

2. SARS'S SOLUTION REQUIREMENTS

2.1. General Notice

This RFQ is issued for quotations from Preferred Suppliers in Scanner Category (s) [_____]

2.2. RFQ Process Overview

[Note to Parties: SARS will specify the detailed process to be followed in executing the RFQ process. This may include the requirements for customer visits, site visits, presentations, proof of concepts, onsite demonstrations etc.]

2.3. Overview

[Note to Parties: SARS will specify the general executive overview of the required solution.]

2.4. Required Dates with regard to this RFQ

[Note to Parties: SARS will provide the dates and times by which or on which activities or deliverables with regard to the RFQ are to be held or met. SARS may add or delete items from this table.]

No	Description	Start Date/Time	End Date/Time
1.	RFQ issue		
2.	Compulsory Briefing Session / Site visit		
3.	Preferred Supplier to submit questions		

4.	SARS to respond to written questions		
5.	RFQ due (the “RFQ Closing Date”)		
6.	Delivery date required to the NISD Solution		

2.5. Business Requirements Specification

[Note to Parties: SARS will provide a description of business requirements, the specifications of which must be met by the Supplier’s proposed solution which may include the following items or additional items.]

- 2.5.1. models, diagrams identifying solution components and options which the Supplier should be capable of satisfying
- 2.5.2. supporting descriptions
- 2.5.3. physical site location(s)
- 2.5.4. any interfacing and integration requirements
- 2.5.5. any enhancement, customisation, development and integration services relating to software and systems
- 2.5.6. mandatory performance requirement of the solution and/or individual components
- 2.5.7. requirements for availability, maintainability, serviceability
- 2.5.8. environmental requirements
- 2.5.9. reporting requirements
- 2.5.10. infrastructure requirements to construct customised building structures
- 2.5.11. service levels applicable\
- 2.5.12. service coverage period
- 2.5.13. solution testing
- 2.5.14. acceptance testing requirements

RFQ RESPONSE SECTION

3. MANDATORY STATEMENT OF COMPLIANCE

3.1. Pre-qualification requirements

The Preferred Supplier must indicate in the following table the status of its compliance with mandatory provisions necessary to qualify to offer a solution to SARS under the terms and conditions of this RFQ. Any attachments to the RFQ in support of the compliance claims must be attached to the Preferred Suppliers response to the RFQ

Table 1 Preferred Supplier Response to mandatory compliances

Mandatory Compliance	Compliance (Y/N)	Returnable Document
<p>Bidders to ensure that they are authorised by OEMs of all equipment proposed as part of the Non-Intrusive Inspection Solution to supply, install, maintain, and support such equipment and that the authorising letters from the OEMs have been attached.</p>		<ul style="list-style-type: none"> - Valid Letters from OEM for resellers or - Letter validating ownership
<p>Bidders to ensure that all assigned personnel under its control possess the accreditations and qualification needed to provide the requested equipment, maintain the system and provide scheduled training.</p> <p>This includes the references of accredited training personnel, appropriately accredited maintenance engineers and an appropriately accredited technical installation team.</p>		<ul style="list-style-type: none"> - References to be provided and accreditation certificates must be included with the bid. - Professional Engineer to commission and sign off technology deployment
<p>Bidders to conform and meet all the criteria and regulations required for X-Ray or other high energy penetration equipment (Gamma, Neutron or X-Ray) as per Bidder's submission products as per SAHPRA legislation and rules as well as the license for the X-Ray (Gamma and Neutron included) machines, issued in terms of the Hazardous Substance Act (Act 15 of 1973). The Bidder must adhere to ISO 45001 and ISO 14001 to meet International health and safety</p>		<ul style="list-style-type: none"> - Certification of accreditation - Certification of compliance with SAHPRA

Mandatory Compliance	Compliance (Y/N)	Returnable Document
standards.		
Bidders to ensure that their in-line transmission scanner is relocatable		<ul style="list-style-type: none"> - 3D Schematic diagram of the equipment with specifications. - Detailed procedure of relocation process
Bidders to ensure that their in-line transmission scanner can penetrate at least 300mm of steel.		<ul style="list-style-type: none"> - Provide proof of a sample of scanned images and potential site visit by client
Bidders to ensure that the scanner has dual energy transmission to allow simultaneous acquiring of dual-energy transmission images.		<ul style="list-style-type: none"> - Specifications and datasheet
Bidders to ensure that the scanner has the capability to perform High-throughput scanning of large objects fast, with scan speed up to 10 km/h (6 mph) without losing scan image quality.		<ul style="list-style-type: none"> - Specifications and datasheet
Bidders to ensure that the scanners have the capability to scan containerized cargo trucks, tautliners, flatbeds, small trucks, busses, and other vehicles.		<ul style="list-style-type: none"> - Specifications and datasheet
Bidders to ensure that high energy equipment has auto-detect of driver's cab functionality to allow in-line scanning without scanning the driver cab.		<ul style="list-style-type: none"> - Specifications and datasheet
A maximum of 3m direct beam radiation exclusion zone where necessary will be accommodated for onsite to meet environmental health and safety standards. Any larger required facility needs to be noted by the respondent with detailed explanation to consider as a qualifying/disqualifying criterion. Exclusion zone details must be stated by each bidder.		<ul style="list-style-type: none"> - Specifications and datasheet
Bidders to ensure that the scanning equipment must allow for all legally sized (including oddly shaped cargo) cargo to be scanned. Cargo that is not loaded according to the south African road transport act must be prevented from entering the facility through integrated sensors.		<ul style="list-style-type: none"> - Specifications and datasheet

Mandatory Compliance	Compliance (Y/N)	Returnable Document

4. PREFERRED SUPPLIER'S SOLUTION

4.1. Technical Response

[Note to Preferred Supplier: guided by the SARS solution architecture and associated solution requirements the Preferred Supplier must provide a comprehensive and detailed technical solution specification using text, graphics, and any other media which will aid in the explanation of the solution in this section].

4.2. Plan of Work

[Note to Preferred Supplier: The Preferred Supplier must specify a detailed project plan with named deliverables and delivery dates together with details of resources to realise the NISD Solution acceptance.]

4.3. Operational Specification

[Note to Preferred Supplier: The Preferred Supplier must provide a full description of the operational requirements of the proposed solution.]

4.4. SARS Responsibilities

[Note to Preferred Supplier: The Preferred Supplier must specify the dependencies that the Preferred Supplier has on SARS to deliver the required NISD Solution]

4.5. Exclusions

[Note to Preferred Supplier: The Preferred Supplier must specify any aspects of deliverables of the required solution as set out in Clause 2.5 (Business Requirements Specification) that have been excluded from the Preferred Supplier's solution]

5. PRICING RESPONSE

The Preferred Supplier has provided complete pricing to satisfy all aspects and deliverables of the solution as set out in Clause 2.5 (Business Requirements Specification) of this RFQ

The Pricing provided by Preferred Supplier is valid for a period of 90 (ninety) days.

[Note to Parties: The Pricing template to be used in response to an RFQ will, in form, be as is supplied in the following tables. SARS may add, change or delete elements of the table(s) as may suit the purposes of a particular business requirement.

Note that the templates may be issued as a separate attachment and possibly in a different application (e.g. Excel sheets)

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Non-Intrusive High Energy In-line Cargo Scanner- designed for inspection of containers and vehicles for identification of the cargo compliance

Table 1 - Acquisition Cost

Item no #	Item Description	Unit Cost Excl. Vat	Vat	Total Cost Incl. Vat
1	Hardware :Including all components/ accessories as per the BRS		R 0.00	R 0.00

**Table 2 - Installation and
Delivery Fee**

Item no #	Item Description	Unit Cost Excl. Vat	Vat	Total Cost Incl. Vat
1	Delivery and Installation		R 0.00	R 0.00
2	Site Preparation		R 0.00	R 0.00
3	Software Intergration		R 0.00	R 0.00

Table 3 - Maintenance and

Support

Item no #	Site Name	Support Level	Service Coverage	Annual Fee (Incl. Vat)
		Level 1/2/3	Standard/Premium	

Table 4 - Escalation

	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
% Escalation						

	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Total Maintenance	0	0	0	0	0	0

<u>TOTAL BIDDING PRICE INCL. VAT</u>	R 0.00
---	--------

Non-Intrusive Low Energy In-line Cargo Scanner- designed for inspection of containers and vehicles for identification of the cargo compliance

Table 1 - Acquisition Cost

Item no #	Item Description	Unit Cost Excl. Vat	Vat	Total Cost Incl. Vat
1	Hardware :Including all components/ accessories as per the BRS		R 0.00	R 0.00

Table 2 - Installation and

Delivery Fee

Item no #	Item Description	Unit Cost Excl. Vat	Vat	Total Cost Incl. Vat
1	Delivery and Installation		R 0.00	R 0.00
2	Site Preparation		R 0.00	R 0.00
3	Software Intergration		R 0.00	R 0.00

Table 3 - Maintenance and

Support

Item no #	Site Name	Support Level	Service Coverage	Annual Fee (Incl. Vat)
		Level 1/2/3	Standard/Premium	

Table 4 - Escalation

	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
% Escalation						

	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Total Maintenance	0	0	0	0	0	0

<u>TOTAL BIDDING PRICE INCL. VAT</u>	R 0.00
---	--------

Time and Material Personnel Rates	Business Hours				After Hours				Saturday				Sun/Public Holidays			
	Rate/hour (Incl VAT)				Rate/hour (Incl VAT)				Rate/hour (Incl VAT)				Rate/hour (Incl VAT)			
	Hourly	Daily	Monthly	Standby	Hourly	Daily	Monthly	Standby	Hourly	Daily	Monthly	Standby	Hourly	Daily	Monthly	Standby
Scanner Technician (At least NQF Lvl 4 qualification + 2 yrs exper																
Scanner Engineer (At least NQF Lvl 5 qualification + 5 yrs experie																
Software Specialist (At least NQF Lvl 5 qualification + 5 yrs experie																
Air-conditioning Technician (At least NQF Lvl 4 qualification + 2 yrs																
Air-conditioning Engineer (At least NQF Lvl 5 qualification + 5 yrs e																
Power and Electronic Technician (At least NQF Lvl 4 qualification +																
Power and Electronic Engineer (At least NQF Lvl 5 qualification + 4																
Electrical Technician (At least Electrical Trade Certificate + 2 yrs e																
Electrician (At least Registered Master Electrician / Installation Ele																
Electrician (At least Registered Master Electrician / Installation Ele																
Electrician with Heavy current HT + 5 yrs experience)																
Fire Protection Technician (At least Registered and approved by S																
Project Manager																
Trainer (Hardware Operations)																
Trainer (Image Recognition)																
Scanner Technician																
Diesel Technician (At least NQF Lvl 4 qualification + 2 yrs experie																
Diesel Engineer(At least NQF Lvl 5 qualification + 5 yrs experie																
Draughtsperson																
General Handyperson																
IT Architect																
Service Delivery Manager																

Time and Material Travel rate	Rate per km (incl VAT)
Time and Material Travel rate	R -

Labour, Travel and Material Sensitivity Factor

Type of Deliverable	A	B	C
	Sensitivity Factor (%)		
	Percentage of rate/charges quoted affected by Forex rate	Percentage of rates/charges quoted affected by CPI	Percentage of rates/charges quoted affected by AA travel rate
Monthly Maintenance Charge			
Monthly Maintenance Travel Charge			
Monthly Break-fix Charges			
Monthly Break-fix Travel Charge			
T&M Labour			
T&M Travel			

Payment schedule		
Payment 1	40%	Upon delivery of all hardware and software components of the NISD Solution to the site intended for installation and commissionin
Payment 2	40%	Upon sign off of the Acceptance Criteria
Payment 3	20%	Upon completion of a period of at least 30 (thirty) continuous days in accordance with its Documentation and the applicable Work Order or Change Order, without an outage (other than an outage attributable solely to user error) and without exhibiting a material defect or deficiency

APPENDIX M-2: FORM OF A WORK ORDER

THIS WORK ORDER NO. _____ dated as of [_____] (the '**Work Order Commencement Date**') is being executed pursuant to the NISD Agreement between South African Revenue Service ("**SARS**") and [_____] (Proprietary) Limited, (Registration No. [_____] ("**Supplier**")) dated as of [_____] , the terms of which are incorporated herein by reference (the "**Work Order**"). Capitalised terms used but not defined herein shall have the meanings given to them under **Annexure A (Glossary)** to the aforesaid Agreement.

Any conflict between the terms and conditions of this Change Order, Work Order and or the Agreement shall be addressed in accordance with **Clause 2.3** of the **Main Agreement**.

1. NATURE OF WORK ORDER

This Work Order (is/is not) issued in terms of the Restricted Work Order provisions of the NISD Agreement.

2. RFQ REFERENCE

The RFQ that gave rise to this Work Order is [_____].

3. DESCRIPTION OF THE NISD SOLUTION

[Note to the Parties: Insert a description of the NISD Solution to be provided by the Supplier. Identify all Supplier resources, hardware, software and services to be provided by Supplier and any Third Party Software to be provided by Preferred Supplier.]

4. DURATION/DELIVERABLES AND TIMELINE

[Note to the Parties: delete whichever is not applicable]

4.1. This Work Order will commence on the Work Order Commencement Date and will terminate on [_____] unless extended or terminated earlier in accordance with the Agreement.

4.2. Preferred Supplier shall procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table B-1.

[Note to the Parties: Identify each Deliverable and provide the other information required to complete Table B-1]

Table B-1		
Name of Deliverable	Description	Key Milestones and Timeline

[Note to the Parties: In the case of New Services and/or applicable maintenance and support, please identify the scope of the New Service and provide the other information required to complete Table B-2]

Table B-2	
Scope	Description

5. SERVICE LEVELS AND SERVICE LEVEL CREDITS

[Note to the Parties: list any applicable Service Levels and Service Level Credits]

6. SUPPLIER CHARGES

Supplier's Charges for Services under this Work Order shall be the amount of R [_____] in accordance with Table B-3 below:

Table B-3

Name of Deliverable	Allocated Portion of the Fixed Price
Total:	

[Note to the Parties: Please list the name of each Deliverable identified in Tables B-4 and take note of Payment Milestones for each such Deliverable as set out in Table B-3. Table B-4 may be adapted to suit the requirements]

Table B-4			
Name of Deliverable	Payment Milestones for such Deliverable	Amount to be Paid Upon Achievement of Milestone	Dates that Payment Milestones are to be Achieved
Total:			

[Signature blocks appear on the next page.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Work Order.

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Supplier name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

APPENDIX M-3: FORM OF A CHANGE ORDER

THIS CHANGE ORDER NO. _____ dated as of [_____] (the ‘**Change Order Commencement Date**’) is being executed with respect to the Work Order #(s)_____ and pursuant to the NISD Agreement between South African Revenue Service (“**SARS**”) and [_____] (Proprietary) Limited, (Registration No. [_____] (“**Supplier**”) dated [_____] , the terms of which are incorporated herein by reference. Capitalised terms used but not defined herein shall have the meanings given to them under **Schedule A (Glossary)** of the aforesaid Agreement.

All terms and conditions of the Work Order(s) not specifically amended in terms of this Change Order will remain in full force and effect. Any conflict between the terms and conditions of this Change Order, Work Order and or the Agreement shall be addressed in accordance with **Clause 2.3** of the **Main Agreement**.

1. DESCRIPTION OF THE CHANGES TO WORK ORDER(S)

[Note to the Parties: Insert the detail of the changes to the Work Order(s) referenced under this Change Order. Upon execution of this Change Order the Supplier shall implement such changes. For purposes of clarity, any new NISD Solutions and/or Projects shall be provided only under Work Orders and not under Change Orders.]

Table M-3-1	
Work Order details to which this Change Order Applies	
Work Order Number	Commencement Date of Work Order to which this Change Order applies

[Note to the Parties: the tables below should be used to reflect the content of the Change Order as it changes the Work Order(s). Where appropriate, necessary deviations from the Form of the Change Order may be used to reflect the content of the change, for example: to reflect the addition of pricing tables, diagrams etc.]

ADDITIONS	
Clauses to be added to the Work Order(s) specified below	
Work Order	Clause(s) to be added

MODIFICATIONS		
Clauses in Work Order(s) to be changed as specified below		
Work Order	Clause in Work Order	Modified clause

DELETIONS	
Clauses in Work Order(s) to be deleted	
Work Order	Clause(s) to be deleted

2. CONTENT OF CHANGE WORK ORDER

[Note to the Parties: this section should contain the entire content of the Work Order(s) as they are changed by the Change Order. The content below should reflect the content of the Work Order as it may have been affected by Change Orders entered into prior to the execution of this Change Order]

The Parties' duly authorised representatives hereby confirm their acceptance of this Change Order.

[Supplier name] South African Revenue Service

By: By:

Printed: Printed:

Title: Title:

Date: Date:

[Supplier name] South African Revenue Service

By: By:

Printed: Printed:

Title: Title:

Date: Date:

SCHEDULE N

DATA PROTECTION AGREEMENT

DRAFT